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HUMAN RIGHTS QUESTIONS: HUMAN RIGHTS QUESTIONS, INCLUDING ALTERNATIVE APPROACHES FOR IMPROVING THE EFFECTIVE ENJOYMENT OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS

Effective promotion of the Declaration on the Rights of Persons belonging to National or Ethnic, Religious and Linguistic Minorities

Report of the Secretary-General

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I. INTRODUCTION

1. The General Assembly, at its forty-eighth session, adopted resolution 48/138 of 20 December 1993 entitled "Declaration on the Rights of Persons belonging to National or Ethnic, Religious and Linguistic Minorities", by which it urged States and the international community to promote and protect the rights of persons belonging to national or ethnic, religious and linguistic minorities as set out in the Declaration, including through the facilitation of their full participation in all aspects of the political, economic, social, religious and cultural life of society and in the economic progress and development of their country; and appealed to States to take all the necessary legislative and other measures to promote and give effect, as appropriate, to the principles of the Declaration.

2. The Assembly also requested the Secretary-General to report to it at its forty-eighth session on the implementation of this resolution under the item entitled "Human rights questions".

3. Pursuant to that resolution, the Secretary-General, by a communication dated 13 June 1994, invited States, interested intergovernmental and non-governmental organizations, special representatives, special rapporteurs and relevant working groups of the Commission on Human Rights and the Subcommission on Prevention of Discrimination and Protection of Minorities to submit their contributions to the Centre for Human Rights by 1 August 1994.

4. As of 7 September 1994, replies had been received from the Governments of China, Croatia, Estonia, Norway, Pakistan, Peru, Turkey and Yugoslavia.

5. The United Nations Educational, Scientific and Cultural Organization (UNESCO) had also sent a reply.

6. The Council of Europe had sent a briefing document on the work accomplished and presently being carried out by the Council in this field.

7. The European Commission of Human Rights had sent an information paper containing the Commission's case law on minorities.

8. In addition, replies had been received from the following non-governmental organizations: Human Rights Watch/Africa and the International Federation of Human Rights.

9. The present report is submitted to the General Assembly in pursuance of resolution 48/138.

II. PROMOTION AND PROTECTION BY STATES OF THE RIGHTS OF PERSONS BELONGING TO NATIONAL OR ETHNIC, RELIGIOUS AND LINGUISTIC MINORITIES

10. In its reply, the Chinese Government stated that it respected and appreciated the basic principles advanced in the Declaration concerning the protection of minority rights. It considered that as their historical backgrounds, cultural traditions, ethnic composition and current levels of economic development were all different, countries should, in promoting and applying the basic principles of the Declaration, proceed in the light of their own factual circumstances, suiting measures to local conditions and protecting all the rights of minorities through effective legislative, administrative, economic, educational and other measures. In its opinion, it is senseless to ask different countries to follow the same models, take the same approaches and make similar moves. Only by drawing upon the different situations in various countries can all of the principles enunciated in the Declaration be put into effect.

11. The Government of Croatia pointed out that the Parliament of the Republic of Croatia had adopted, in May 1992, the Constitutional Law on Human Rights and Freedoms and the Rights of National and Ethnic Communities or Minorities in the Republic of Croatia, by which the Republic guaranteed all of its citizens the respect for and protection of national and other fundamental rights and freedoms of man and citizen, rule of law and all the other highest values of its constitutional and international legal order in accordance with principles of the United Nations Charter and other international instruments.

12. The Government of Estonia stated that the population of the country was similar in composition to the population of the majority of European States, being monoracial though multi-ethnic. Parallels can also be drawn in the way multi-ethnicity has emerged, through a massive influx of migrant workers seeking better wages and living conditions in the post-Second World War period. Although this process in Estonia and in Western European countries may seem similar, the two cannot be justly compared as they transpired under vastly different circumstances. Where the Government of a Western European State, with the consent of its citizens, might have encouraged the influx of an alien work force, in Soviet-occupied Estonia this took place within the framework of a consistent russification policy by Moscow against the will of the indigenous Estonian population.

13. According to information submitted by the Government of Peru, its legislation has recognized that the advancement and protection of the rights of persons belonging to national or ethnic, religious and linguistic minorities contribute to political and social stability, as well as to peace, and enrich the cultural heritage of States; accordingly, it has given preferential treatment to rural and native communities, which possess legal status, qualify as legal persons and enjoy autonomy in their organization, in communal labour and in the use and free disposal of their land, as well as for economic and administrative purposes, within the framework laid down by law. In particular, article 85 of its Constitution provides that the State respects the cultural identity of the rural and native communities.

14. Apart from national minorities, the Constitution and positive laws of Yugoslavia make no explicit mention of the categories of religious or linguistic minorities. The federal Constitution speaks only of national minorities and their ethnic, cultural, linguistic and other specificities, while the phraseology of Republican Constitutions is dissimilar: the Constitution of the Republic of Serbia speaks of nationalities, while the Constitution of the Republic of Montenegro speaks of national and ethnic groups. Bringing the Republican Constitutions in line with the federal Constitution and the homogenization of their phraseologies still remain to be done.

A. The protection of the existence of persons belonging to minorities

15. States recognized the need to protect the existence of persons belonging to minorities and adopted legislative and other measures to achieve those ends. Some of them also produced figures indicating the national composition of the population.

16. China has 56 separate ethnic groups in its total population of 1.16 billion, of which the Han Chinese is the largest, representing 91.96 per cent; the remaining 55 together account for 8.04 per cent of the population, and of these the Mongols, Hui, Tibetans, Uighurs and 14 other ethnic groups each number over one million. Chinese is spoken throughout the country, but at the same time the local nationality's language and script are used in each area with a high ethnic population.

17. The Republic of Croatia guarantees the members of ethnic and national communities or minorities the following:

(a) Protection from any activity that could threaten their survival;

(b) The right to identity, culture, religion, public and private use of language and script, and education;

(c) The right to decide to which ethnic and national community or minority a person wishes to belong.

18. The Government of Estonia pointed out that before occupation Estonia was ethnically relatively homogeneous. The share of Estonians in the national population (ca. 1.14 million) was 88.2 per cent, while Russians at 8.2 per cent formed the largest national minority, followed by Germans, Swedes, Jews, Latvians and others. The number of Estonians fell by 17.5 per cent between the years 1941-1949 owing to deaths, deportations to Russia and refugees fleeing to the West. Starting in the 1950s, the percentage of Estonians declined steadily owing primarily to a brisk flow of immigrants of Eastern Slavic origin, such that by 1991 it had fallen to 61.5 per cent. Since the restoration of independence, this percentage has increased slightly and is currently estimated at 67 per cent by the Department of Citizenship and Immigration. This increase predominantly reflects the departure of former Soviet military personnel and their family members.

19. During the Soviet occupation, two traditional ethnic minorities, Germans and Swedes, virtually disappeared from Estonia. Even though the non-Estonian population grew by 30 per cent, the differences between these peoples were obscured. Among the newcomers, non-Russians were also subject to Soviet policies of forced ethnic assimilation. As they lacked ties to Estonian society and to their own national culture, a peculiarity resulted by which non-Russian ethnic minorities became russified within Estonia. In newly independent Estonia, many ethnic minorities have begun to identify themselves as a distinct group and have expressed the desire to be disassociated from Russia's self-imposed role as the protector of a supposedly homogeneous "Russian speaking population".

20. In October 1993, a new Law on Cultural Autonomy for National Minorities was adopted. The law defines national minorities as Estonian citizens who:

(a) Reside in the territory of Estonia;

(b) Maintain longstanding, firm and lasting ties with Estonia;

(c) Are distinct from Estonians on the basis of their ethnic, cultural, religious or linguistic characteristics;

(d) Are motivated by a concern to preserve together the cultural traditions, religion or language which form the basis of their common identity.

21. Article 3 stipulates that every member of a national minority has the right to preserve his or her own ethnic identity, cultural traditions, native language and religious beliefs. It is prohibited to ridicule and to obstruct the practices of ethnic cultural traditions and religious practices and to engage in any activity which is aimed at the forcible assimilation of national minorities.

22. The Estonian Law on Cultural Autonomy for National Minorities, in adherence to international practice, limits the definition of national minority to citizens of Estonia. It should be noted that the Estonian Law on Citizenship is based on the principle of jus sanguinis, and that accordingly all persons who were citizens of Estonia prior to the Soviet occupation on 16 June 1940, and their descendants, were automatically recognized as Estonian citizens upon the restoration of independence. Nevertheless, the law also significantly addresses the foreigners who immigrated to Estonia during the occupation. They are allowed to participate in the activities of cultural and educational institutions and religious congregations, but may not vote nor be elected or appointed to the cultural self-government council.

23. In Norway, the term minorities is used in the broad sense, meaning national and ethnic, linguistic or cultural groups which differ in significant respects from other groups within the State. A distinction is also made between "recent immigrant groups" and "settled minorities".

24. During the 1980s, approximately 25,000 foreigners acquired Norwegian nationality. The number naturalized annually has been on the increase in recent years. Among the so-called "settled minorities", the Sami people are the only minority group considered to be indigenous people in Norway. There is no

official figure for the number of Sami living in Norway, but the population is estimated to be about 40,000. Most of them live in the northern part of Norway.

25. Norway does not have special procedures for formal recognition of minorities. If minorities are granted special rights, or special measures are implemented concerning minorities (e.g. the use of minority languages, educational and cultural measures, etc.), this is normally organized by the sector involved. The status of the Sami people is established in both the Constitution and the Sami Act. An amendment to the Norwegian Constitution of April 1988, article 110a, states:

> "It is the responsibility of the authorities of the State to create conditions enabling the Sami people to preserve and develop its language, culture and way of life."

26. The Constitution of Peru empowers any citizen to file the appropriate constitutional actions against any authority or official who threatens or undermines fundamental rights (Constitution, art. 200). Furthermore, article 129 of the Penal Code establishes the crime of genocide and punishes by not less than 20 years' imprisonment anyone who commits any of the following acts with the intention of totally or partially destroying a national, ethnic, social or religious group:

(a) A massacre of members of the group;

(b) An act causing serious physical or mental harm to members of the group;

(c) Subjecting the group to living conditions intended to lead to its total or partial destruction;

(d) Measures intended to prevent births within the group;

(e) The forced transfer of children to another group.

27. According to information received from the Government of Yugoslavia, the Federal Republic of Yugoslavia is a multi-ethnic State with national minorities and various ethnic groups accounting for almost one third of its overall population. According to the 1991 census, the population breakdown is as follows: out of 10,394,026 inhabitants of Yugoslavia, 6,504,048, or 62.3 per cent, are Serbs, 519,766, or 5 per cent, are Montenegrins, 1,714,768, or 16.6 per cent, are ethnic Albanians, 349,748, or 3.3 per cent, are Yugoslavs, 344,147, or 3.3 per cent, are Hungarians, 336,025, or 3.1 per cent, are Muslims, 143,519, or 1.3 per cent, are Romanies, 111,650, or 1.1 per cent, are Croats, 66,863, or 0.6 per cent, are Slovaks, 47,118, or 0.5 per cent, are Macedonians, 42,364, or 0.4 per cent, are Romanians, 26,922, or 0.2 per cent, are Bulgarians, 21,434, or 0.2 per cent, are Bunjevci, 18,099, or 0.2 per cent, are Ruthenians, 17,810, or 0.2 per cent, are Vlachs, 11,263, or 0.1 per cent, are Turks, while less than 0.1 per cent are either Slovenes, Germans, Ukrainians, Czechs, Russians, Sokci, Poles, Jews, Greeks or other nationalities.

28. According to the 1990 Constitution, the Republic of Serbia consists of two Autonomous Provinces: Vojvodina and Kosovo and Metohija, with forms of territorial autonomy. Their autonomy is based on the specific national, historical, cultural and other features of these regions. In the Autonomous Province of Kosovo and Metohija, ethnic Albanians, as a national minority, account for 82.2 per cent of the population, while in the Autonomous Province of Vojvodina ethnic minorities account for 40.5 per cent of the population. The citizens of the Autonomous Provinces regulate the issues relevant to economic development, finances, culture, education, etc. through their organs (Provincial Parliaments and Governments).

29. A special provision in the Constitution of Yugoslavia (art. 11) provides that the Federal Republic of Yugoslavia shall recognize and guarantee the rights of national minorities to the preservation, development and expression of their ethnic, cultural, linguistic and other specificities, as well as to the use of their national symbols, in accordance with international law.

B. The right to enjoy their own culture

30. On the basis of the provisions of the 1992 Constitutional Law of Croatia, members of national and ethnic communities or minorities are free to found cultural and other societies aimed at preserving their national and cultural identity. These societies are autonomous and Croatia and local self-governing bodies provide financial support in accordance with their financial resources. In addition, Croatia protects historic monuments and the entire cultural heritage of national and ethnic communities or minorities (arts. 11 and 12).

31. Article 2 of the 1993 Law on Cultural Autonomy of Estonia defines cultural autonomy for national minorities as the right of individuals belonging to a national minority to exercise cultural autonomy in order to exercise the cultural rights given to them by the Constitution. National minority cultural autonomy may be established by the German, Russian, Swedish and Jewish minorities, which qualified under the provisions of the 1925 law, and by any other national minority with more than 3,000 members. The rights of the national minorities are specified in article 4 of this law to include the right to form and support cultural and educational institutions, religious congregations and ethnic organizations, to practice cultural traditions and religious customs, if this does not endanger public order, health or morals and to use their native language in all dealings within the limits established by the Language Law, including the right to issue ethnic language publications.

32. In accordance with article 2, paragraph 19 of the Constitution of Peru, the State recognizes and safeguards Peru's ethnic and cultural pluralism. Article 15 of the Penal Code of Peru (Legislative Decree N635 of 8 April 1991) introduces the category of de facto error attributable to cultural conditioning, which constitutes a mitigating circumstance or exempts from criminal liability anyone who, for reasons of culture or custom, commits an act that constitutes a punishable offence under Peruvian legislation. Article 15 reads as follows:

> "Anyone who commits an offence on account of his culture or customs without being able to understand the criminal nature of his act or to take

a decision because of his cultural background shall be exempt from liability. If for the same reason such capacity is diminished, the penalty shall be reduced."

33. The Government of Yugoslavia pointed out that out of about one dozen professional theatres for adults in the territory of Vojvodina, two perform in Hungarian. There are also two theatres for children in Hungarian, while one theatre performs in Hungarian, Slovak, Ruthenian and Albanian. In Slovak, Romanian and Ruthenian cultures, amateur theatres function as professional and are subsidized from the State budget. There are as many as 420 cultural and art societies in Vojvodina, while the State subsidizes regular cultural events. Community culture centres have been opened throughout the Province with libraries, reading rooms, cinemas, amateur troupes and courses.

34. In order to preserve and promote the culture of minority communities of Pakistan, the Government of Pakistan has introduced a scheme of National Cultural Awards exclusively for the minorities. Under this scheme, awards accompanied by a cash prize of PRs. 50,000 in each field are granted each year in the fields of literature, fine arts, performing arts and folk arts.

C. The right to profess and practise their own religion

35. The Constitution of Croatia recognizes and protects the right to freedom of thought, conscience and religion (arts. 38 and 40).

36. The Government of Estonia stated that no cases of religious intolerance had been noted in Estonia. Pursuant to article 40 of the Constitution, all persons have the right to freedom of conscience, religion and thought. Membership in churches and religious organizations is free and there is no state church. Every person has the freedom to practice his or her religion, either alone or in community with others, in public or in private, unless this endangers public order, health or morals. The provisions of articles 40, 41 and 11 of the Constitution all relate to the freedom of conscience, religion and thought and are included among those rights which may not be restricted, even in a state of emergency or a state of war (art. 130). An additional safeguard of religious freedom is provided by article 138 of the Criminal Code, which deems the obstruction of a religious ceremony to be a criminal offence punishable by a fine or imprisonment.

37. Pursuant to article 4 of the Law on Churches and Congregations, every person has the right to freely choose, express and proclaim his or her religious beliefs. No one is obliged to provide information on his or her religious or church membership. Parents and legal guardians are ensured the freedom to provide their children with religious and moral education according to their beliefs. The Law on Churches and Congregations requires that all congregations include at least 12 members and be registered with the Ministry of Internal Affairs and the Religious Affairs Board. Leaders of congregations must be Estonian citizens who have resided in Estonia for at least five years. This principle has not created any problems in practice.

38. Under the Constitution and the laws of Pakistan, minorities in that State have complete freedom to practice their faith. Relevant articles of the Constitution of the Islamic Republic of Pakistan - 1973 in this regard are reproduced below:

"Article 20.

"Subject to law, public order and morality:

"(a) Every citizen shall have the right to profess, practice and propagate his religion; and

"(b) Every religious denomination and every sect thereof shall have the right to establish, maintain and manage its religious institutions.

"Article 21.

"1. No person attending any educational institution shall be required to receive religious instruction, or take part in any religious ceremony, or attend religious worship, if such instruction, ceremony or worship relates to a religion other than his own.

"2. In respect of any religious institution, there shall be no discrimination against any community in the granting of exemption of concession in relaxation to taxation.

"3. Subject to law:

"(a) No religious community or denomination shall be prevented from providing religious instruction for pupils of that community or denomination in any educational institution maintained wholly by that community or denomination."

39. In accordance with paragraph 3 of article 2 of the Constitution of Peru, all persons are entitled to "freedom of conscience and religion, either individually or in association. There shall be no persecution of ideas or beliefs. No one shall be deemed to commit an offence for holding an opinion. All forms of public worship shall be free, provided they do not offend morals or disturb public order".

40. According to the Constitution and positive laws of Yugoslavia, religion is free, which implies the freedom of belief, practice and performance of religious rites. About 50 registered religious communities are active in the territory of Yugoslavia. In addition to the Serbian Orthodox Church, there is the Islamic Community serving Muslims and Albanians and the Roman Catholic Church serving Croats and Hungarians. Traditional Protestantism is represented by the Slovak Evangelist Church, which congregates the members of the Slovak national minority and by the Christian Reform Church, which is active among Hungarians. There are also the Romanian Orthodox Church, the Evangelist-Methodist Church, the Christian Adventist Church, the Christian Baptist Church, the Christian Nazarene Community, the Jewish Community with its Religion Section, etc. Services in all

these churches are performed in the language of the majority of their believers. All religious communities are free and independent in the performance of their rites and in their internal organization. They are also free to maintain international contacts and become members of international church organizations and other inter-church associations.

D. The right to use their own language

41. As mentioned above, in China, Chinese is spoken throughout the country, but at the same time the local nationalities' languages and scripts are used in each area with a high ethnic population. The Government assists minorities in arranging cultural education so that they may use their own languages and writing systems.

42. In Croatia, on the basis of the provisions of the Constitutional Law, members of the ethnic and national communities or minorities are free (a) to organize informative and publishing activities in their own language and script; (b) be educated in kindergartens and schools in their own language and script; and (c) to found private kindergartens, schools and other educational institutions. The Parliament of Croatia adopted the Law on the Official Use of Language and Script of Ethnic and National Communities or Minorities, which guaranteed the official use of language and script of members of ethnic or national, religious and linguistic minorities before courts and the bodies of State administration. The Law on Telecommunications regulates the use of language of ethnic or national communities or minorities in radio and television programmes.

43. According to articles 7 and 8 of the Constitutional Law of Croatia, in those municipalities where members of a national or ethnic community or minority represent the majority of the total population, the alphabet and language of that national or ethnic community or minority will be officially used, together with the Croatian language and with the Latin alphabet. Local self-governing units may decide to use two or more languages and alphabets officially, taking into account the number of the members and the interests of national or ethnic communities or minorities.

44. Except for religious teaching by the congregation (and to some extent schools initiated by North Americans, the British and French), recent immigrant groups have not yet started their own schools in Norway. Their needs are met as far as possible within the public school system. However, if they decide to start private schools, these may obtain public assistance, as long as they fulfil general requirements for such funding. There are a number of cultural and educational institutions for the Sami people.

45. The Norwegian Government allocates funds for the special educational needs of linguistic minorities, including recent immigrant groups. A substantial proportion of these funds is used for teaching the mother tongues of such minorities, mainly at the compulsory primary and lower secondary levels of the school system. However, such teaching is not a legal right. Approximately half of all the minority language students thus received such education through the public school system. The highest proportion of pupils receiving education in

their mother tongue is found among native Urdu speakers (approximately two thirds).

46. Since 1967, the Act concerning primary and lower secondary education has included the right to learn Sami. The Act on primary education has recently been amended to strengthen that right. Children in Sami districts are entitled to be educated in or be taught the Sami language and the municipal council may make such education compulsory. Outside Sami districts, children with a Sami background may receive education in Sami; if there are at least three Sami-speaking pupils in a school they may demand such education. The Sami Act gives Sami speakers the right to use their language in contact with local and regional authorities.

47. In accordance with article 28 of the Constitution of Pakistan, any section of citizens having a distinct language, script or culture shall have the right to preserve and promote them and, subject to law, establish institutions for the purpose.

48. The Government of Peru undertakes measures prescribed by the Constitution to eradicate illiteracy and promote bilingual and intercultural education, in accordance with the nature of each region. It safeguards Peru's cultural and linguistic diversity. It fosters national integration (art. 17). The Government is concerned with eradicating illiteracy and promoting bilingual education, together with intercultural education, while safeguarding Peru's cultural and linguistic diversity (art. 17). Clearly, access to education is subject to no form of discrimination; on the contrary, the Government seeks to provide encouragement and support for academically deserving pupils. Education in Peru is subject to the following norm pursuant to the General Education Act, No. 23384 of 18 May 1982:

> "Preferential treatment for marginal sectors, border areas, rural areas, settlements where indigenous languages predominate and other similar circumstances (art. 4, para. (d))."

49. According to the Constitution of Yugoslavia, the language and alphabet of a national minority living in an area are officially used in that area in accordance with the law. The official use of a language and an alphabet is considered to be the use of the language and alphabet in the work of State organs, organs of Autonomous Provinces, towns, cities, municipalities, institutions, enterprises and other public organizations. The languages and alphabets of national minorities are also used for the inscription of square-, street- and place-names and for other geographical designations, for public address, information and warnings and for the inscription of other public names. The languages and alphabets of national minorities are used in the communication between organs and organizations, as well as with citizens, in proceedings for the realization and protection of rights, duties and responsibilities of citizens and for the keeping of records, issuance of personal documents, etc.

50. According to the statute of the Autonomous Province of Vojvodina, the highest legal act of the Province, in addition to the Serbian language and the Cyrillic alphabet (or the Latin alphabet in the manner specified by law), the Hungarian, Slovak, Romanian and Ruthenian languages and alphabets as well as the

languages and alphabets of other nationalities in the manner specified by law are also officially used by the organs of the Autonomous Province. Consequently, simultaneous interpretation into five languages is regularly provided during Vojvodina Assembly sessions. In their work, the Provincial organs communicate with citizens in the languages of national minorities. Courts in Vojvodina conduct proceedings in the languages in the official use in that territory and where this is not possible, interpretation services are provided.

51. Education in Yugoslavia is accessible to all under the same conditions, while the eight-year elementary education is compulsory. Education in the languages of national minorities is organized at all levels, from pre-school to university, while regular education in all languages in official use in elementary, secondary and high schools is free.

52. The regulations of the Republic of Montenegro provide for the opening of schools and classes in the Albanian language or schools and classes with bilingual instruction in the areas inhabited with a substantial number of ethnic Albanians. This pertains to elementary and secondary schools. In the schools with Albanian as the language of instruction, registration and certificates are in Serbian and Albanian.

53. Under the Law on Elementary Schools and the Law on Secondary Schools of the Republic of Serbia, national minority plans and programmes are in respective mother tongues if at least 15 students have enrolled in form one; however, such plans and programmes are available also for a smaller number of students if approved by the Minister of Education. There are also provisions for organizing bilingual education or complementary maternal language courses with elements of national culture.

54. Under the provisions of the Law on Higher Schools and the Law on Universities of the Republic of Serbia, instruction is carried out in Serbian, but it can be carried out also in the language of a national minority if so provided by the decision of the founder and on the basis of the opinion of the University. The following languages are used as instruction languages in high and higher education: Hungarian at seven, Slovak at two, Romanian at two and Ruthenian at two faculties. Education is organized in the same way also in the Autonomous Province of Kosovo and Metohija, but ethnic Albanian students boycott not only the classes at the Pristina University but the entire education in State schools from pre-school on, motivated exclusively by political reasons. Before the boycott, the University of Pristina had 37,000 students, 80 per cent of whom were ethnic Albanians studying in the Albanian language, with the Republic of Serbia subsidizing 98 per cent of their education costs.

55. Under the Law on Public Information in the Republic of Serbia every one is free to establish a newspaper, the only requirement being to register it with the competent court. It is within the competence of the Autonomous Province of Vojvodina to provide conditions for public information in the languages and alphabets of national minorities. The publication of 14 newspapers in the languages of national minorities is subsidized from the budget of Vojvodina. According to the latest statistical data, the following newspapers in Yugoslavia were published in the following languages: Hungarian 17, Romanian and

Ruthenian 11, Czech and Slovak 8, Albanian 7, Turkish 2, Bulgarian 1 and 19 in more than one language. The following magazines were published in national minority languages: Hungarian 4, Romanian and Ruthenian 4, Czech and Slovak 4, Bulgarian 1, Turkish 1 and 36 magazines in more than one language.

56. Out of 285,287 radio and television hours in Yugoslavia, 6,454 were broadcast in Albanian, 105 in Bulgarian, 19,543 in Hungarian, 3,599 in Romanian, 1,803 in Ruthenian, 5,485 in Slovak, 3,149 in Turkish, 48 in Ukrainian and 4,614 hours in the languages of other minorities. Radio stations in Vojvodina broadcast in eight languages: Serbian, Hungarian, Slovak, Romanian, Ruthenian, Ukrainian, Macedonian and Romany. The radio in Hungarian broadcasts its programme round the clock; in Slovak seven hours a day on average, Romanian seven hours and in Ruthenian four hours a day. These data pertain to Radio Novi Sad, the central station for the Vojvodina area. This Province also has 25 regional and local radio stations, 4 of which prepare and broadcast programmes in 4 languages, 6 stations have programmes in 3 languages, 8 in 2 languages and 4 stations in 1 language.

E. The right to participate effectively in cultural, religious, social, economic and public life

57. The Chinese Government stated that it had always held that the harmony and unity of the nationalities in a multinational State depended not only on the progress made by each individual nationality but also on the stability and development of society as a whole. Thus as it laid down policy on political affairs, the economy and social development it took the utmost care to protect the rights and interests of its minorities. Current Chinese legislation on minorities comprises both nationwide law, including the Constitution and the Law on Regional National Autonomy, and local laws and regulations, including autonomous ordinances and special regulations issued by national autonomous areas. These various laws and regulations deal with every aspect of minority politics, economics, cultural education, spoken and written language, religious belief and so forth. China may already be said to have started developing a legal system that protects all minority rights.

58. For historical, geographical, social and other reasons, levels of socio-economic development in some minority national areas still lag behind those in the areas inhabited by Han Chinese. In order to help these areas catch up with the developed ones as quickly as possible, the Government takes the utmost care to provide the requisite financial, human and material support; it gives them preference in its formulation of popular economic development plans, and at the same time requests and encourages the developed areas to assist the minority national areas while advocating mutual reinforcement among the regions. Thanks to assistance from the State and the efforts of their own inhabitants, substantial advances have been made in the economic construction of the minority national areas.

59. In accordance with article 89 of the Constitution of Peru, the rural and native communities possess legal status and qualify as legal persons. They shall be autonomous for purposes of organization and communal labour and as regards the use and free disposal of their land, and for economic and

administrative purposes, within the framework laid down by law. Ownership of their land is imprescriptible.

60. The Environment Code, Legislative Decree No. 613 of 7 September 1990, stipulates in its article 54 that Peru recognizes the title of ancestral rural and native communities to the land they possess within the nature reserves and their zones of influence, and fosters their participation. Mention should also be made of the Act to Promote Investment in the Agricultural Sector, Legislative Decree No. 653 of 1 August 1991; in order to protect and preserve the rural and native communities, this Act stipulates that the owners of agrarian holdings of over five (5) hectares, with the exception of rural and native communities, may mortgage their land to any natural or legal person as security for the performance of their obligations. Priority among creditors shall be determined, without exception, by the date on which the mortgage was entered in the public registers (Act to Promote Investment in the Agricultural Sector, art. 9); in addition, the rural and native communities, as well as peasant cooperative enterprises that own forest land, may enter into rental contracts in respect of them for a renewable period of up to thirty (30) years so that they may be used to establish and/or operate forestry plantations.

61. There are a number of other laws in Peru aimed at promoting and protecting economic activity of minorities. Among them, Act No. 22175 on native communities and for promotion of farming in the Selva and Selva fringe regions has made possible considerable progress in the integration of the native community into national economic life on equal terms, thereby protecting ethnic minorities in the Selva. Act No. 23407 prohibits industries from causing damage to the communities. Act No. 25381 stipulates that native communities may not be considered taxable persons for the purposes of income tax payment. Legislative Decree No. 635 protects native communities from being illegally deprived of their property. Legislative Decree No. 776, the Municipal Tax Act, exempts native communities from the land tax. Supreme Decree No. 46-93-EM protects native communities and the environment from petroleum-related activities.

62. The Government of Yugoslavia pointed out that every citizen of the State, no matter whether he or she was a member of a majority or minority group or not, had the right to participate in government at all levels under the same conditions. In the present multi-party political system in Yugoslavia, minority populations tend to rally around either ethnic political organizations or to join other political organizations (socialists, democrats, radicals, etc.).

F. The right to participate effectively in decisions on the national level

63. The Chinese Government stated that in its handling of ethnic affairs, it extensively solicits the views of each ethnic group concerned and conducts thorough consultations. At the same time, by means of legislation and ad hoc measures, it guarantees minority involvement in all aspects of public life and in national and local affairs.

64. The Parliament of the Republic of Croatia adopted individual laws under which the rights of the members of national or ethnic, religious and linguistics minorities are guaranteed and protected, as follows:

(a) The Law on the Election of Representatives in the Parliament of the Republic of Croatia, which guarantees members of national or ethnic, religious and linguistics minorities to be represented in the Parliament of the Republic of Croatia;

(b) The law on the Election of Representative Bodies of Local Self-Government and Administration Units, which provides that members of national or ethnic, religious and linguistic minorities shall be represented in the representative bodies of local self-government and administration units (in countries, cities and municipalities);

(c) The Law on Local Self-Government and Administration, which provides that the structure of the employees in the administration bodies of local self-government units corresponds to their representation in the representative bodies;

(d) The Law on the System of the State Administration, which also guarantees adequate representation of members of national or ethnic, religious and language minorities.

65. The Government of Estonia pointed out that in order to improve the level of communication between the Estonian Government and the non-Estonian population, the President had invited representatives of all national minorities and permanently residing aliens to take part in Round Table talks, providing a forum for dialogue with Estonian politicians. The goal of the Round Table, which also included representatives from the Union of Estonian Nationalities, political parties, and the Representative Assembly elected by the non-Estonian community, was to discuss issues that affect the non-citizen and national minority communities. Its tasks included the solving of issues concerning aliens permanently residing in Estonia, providing assistance to applicants for Estonian citizenship and addressing issues related to the study and use of the Estonian language (statute of the Round Table, art. 7). The President's representative may present the Round Table's proposals and recommendations to the Parliament and Government and may make proposals concerning draft laws under discussion in parliamentary committees.

66. In Norway, foreigners with three years of continuous residence in the State have full voting rights in local and regional elections. Furthermore, the Ministry of Local Government has appointed a liaison committee between immigrants and Norwegian authorities, where all matters of principle related to Norwegian immigration/immigrant policy are discussed. In addition, some important policy documents are sent out for review to immigrant organizations. The provisions of section 1-1 of the 1987 Sami Act might be mentioned. They established the Sami Parliament, a body with some executive powers, and with a consultative status vis-à-vis the national authorities where questions concerning the Sami population are involved. The 39 members of the Assembly are elected by and among registered Samis through a process identical to the general elections.

67. In Pakistan, according to article 36 of the Constitution, the State safeguards the legitimate rights and interests of minorities, including their due representation in the Federal and Provincial Services. Article 51 provides that there shall be in the National Assembly 10 additional seats reserved for Christian, Hindu, Sikh, Buddhist and Farsi communities and other non-Muslims. According to its article 106, a certain number of seats are specified for non-Muslims in provincial assemblies.

G. The right to establish and maintain their own associations

68. The Secretary-General has received only one reply, from the Government of Croatia, stating that in accordance with article 4 of its Constitutional Law,

> "Ethnic and national communities or minorities have the right to self-organization and association in order to realize their national or other rights in compliance with the Constitution of the Republic of Croatia and this Law."

69. The right of persons belonging to minorities to establish cultural and other societies was analysed in section B above. However, it should be emphasized that the promotion of this right could contribute to the promotion and protection of other rights of persons belonging to minorities. For instance, effective participation in cultural, religious, social, economic and public life requires that minorities be entitled to form their own associations.

H. The right to establish and maintain free and peaceful contacts with other members of their group, as well as contacts across frontiers

70. The right of persons belonging to minorities to have as free and wide contacts as possible with related populations on the other side of the border is considered as essential for the preservation and development of their language, culture and spiritual life. With reference to this right, only a few replies made mention thereof.

71. According to article 4 of its Constitutional Law, Croatia assists the development of the relations between national and ethnic communities or minorities with the nationality of their parent country in order to promote their national, cultural and language development.

72. The 1993 Law on Cultural Autonomy for National Minorities of Estonia provides for the right of those minorities to conclude agreements of cooperation between ethnic, cultural and educational institutions and religious congregations and to freely circulate and exchange information in their native language.

73. In Peru, in accordance with the General Education Act, the Government's cultural policy strives to develop full appreciation of Peru's cultural heritage, to preserve and enhance it and to develop cooperation and interchange

with universal culture, in particular that of Latin America, while preserving national autonomy and identity and fostering knowledge of the languages spoken in Peru (art. 4, paras. (a) and (c)).

I. Equality before the law

74. States which ratified the human rights Conventions expressly undertook obligations as States parties to respect and ensure the human rights contained in those treaties without discrimination or "without distinction of any kind". All States which sent replies recognized their responsibility for ensuring equality and non-discrimination within their territory.

75. The Chinese Government recognized that some of the measures proposed in the Declaration concerning the guaranteeing of equality for minorities with citizens of their home country in all civil rights and fundamental freedoms would be of benefit in promoting harmonious relations between all nationalities throughout the country. With regard to domestic legislation, article 4 of the Chinese Constitution states that all nationalities in the People's Republic of China are equal and that the State protects the lawful rights and interests of the minority nationalities and upholds and develops the relationship of equality, unity and mutual assistance among the nationalities. Discrimination against and oppression of any nationality are prohibited; any acts that undermine the unity of the nationalities or instigate their secession are prohibited.

76. The protection of rights of persons belonging to national or ethnic, religious and linguistic minorities is guaranteed by the Constitution of the Republic of Croatia. Article 15 of the Constitution provides that members of all nations and minorities have equal rights in the Republic of Croatia and are guaranteed freedom to express their nationality, freedom to use their language and script, and cultural autonomy. In addition, article 6 of the Constitutional Law guarantees the members of all national or ethnic communities or minorities full observance of the principle of non-discrimination and the protection of equality of participation in public affairs, e.g. the right to political and economic freedoms in the social sphere, access to media, and in education and cultural matters in general.

77. In Estonia, the rights, liberties and duties of everyone and all persons, as listed in the Constitution, are the same for Estonian citizens as for citizens of foreign States and stateless persons (art. 9). Discrimination on the basis of nationality, race, colour, gender, language, origin, religion, political or other beliefs, financial or social status or any other reason is prohibited by the Constitution (art. 12). The incitement to national, racial, religious or political hatred, violence or discrimination is prohibited and punishable by law. The incitement to hatred, violence or discrimination between social strata is equally prohibited and punishable by law.

78. In accordance with article 25 of the Constitution of Pakistan, "all citizens are equal before law and are entitled to equal protection of law". Articles 26 and 27 prohibit any discrimination in respect of access to places of public entertainment and appointment to public service. Article 21, paragraph 3 (b) stipulates that "no citizen shall be denied admission to any

educational institution receiving and from public revenues on the ground only of race, religion, caste or place of birth". In addition, paragraph 4 of this article states that "nothing in this Article shall prevent any public authority from making provision for the advancement of any socially or educationally backward class of citizens".

79. Article 2 of the Constitution of Peru states that all persons are entitled to equality before the law. No one shall be discriminated against on grounds of origin, race, sex, language, religion, opinion or economic status or on any other ground. The Government of Peru pointed out that the country based its legislation relating to minorities on equality before the law and permitted no discrimination whatsoever on grounds of origin, race, sex, language, religion, opinion or economic status or on any other ground.

80. The Government of Peru is aware of the harsh and grave problems faced by the indigenous communities, and it will require considerable effort and imagination to overcome the poverty, political and social violence, lack of communication and intolerance, leading to exclusion, which foster marginalization and racism. This portrayal of Peruvian society corresponds more closely to the Amazon region, to its population and to its cultural wealth. Accordingly, Peru recognizes the need to enhance its presence by channelling greater funds and providing more efficient and appropriate services to alleviate marginalization and to progress towards national integration.

81. The Government of Turkey stated that the equality of all Turkish citizens before law was guaranteed under Turkish legislation and they faced no discrimination whatsoever as far as their statutory rights were concerned.

82. In Yugoslavia, the federal State and its constituent Republics (Serbia and Montenegro) are defined in the Constitution as States based on the equality of all their citizens. There is no discrimination on the basis of ethnic origin and the State is not defined as a State of the largest nation. Accordingly, all citizens, irrespective of whether they belong to the Serbian or Montenegrin people, or to a national minority or ethnic group, are guaranteed the same human rights and freedoms by the Constitution.

J. Mechanism, procedure and other measures to promote and protect the rights of persons belonging to minorities

83. There is a general recognition of the necessity to have a mechanism and procedure available to deal with minority issues and to take remedial action before persons belonging to a minority feel that their legitimate rights and interests are violated or neglected. Therefore, States have established various mechanisms and procedures to this end. For instance:

> "In order to promote and protect the rights of national or ethnic, religious and linguistic minorities, the Republic of Croatia has established the Government Office for Inter-Ethnic Relations as well as the Department for Minorities within the Ministry of Foreign Affairs."

84. The Government of Pakistan has made the following institutional arrangements for promotion and protection of the rights of the minorities communities:

(a) Minorities Affairs Division

A full-fledged Division in the Federal Government, namely, the Minorities Affairs Division, has been established for safeguarding the rights of minorities, as guaranteed to them by the Constitution;

(b) National Commission for Minorities

In order to promote the welfare and uplift of minorities living in Pakistan and to protect and safeguard their religious, social and cultural rights, the Government has constituted a high-powered National Commission for Minorities under the Chairmanship of Minister for Minorities Affairs. The Commission is represented by all sects of minorities living in Pakistan;

(c) Federal Advisory Council for Minorities Affairs

The Council was set up under the auspices of the Minority Affairs Division and advises the Government on matters concerning the welfare of the minorities. The Government formulates policies with regard to the rights etc. of the minorities in the light of the recommendations of the Council. Non-official members of the Advisory Council consist of all minority members of National and Provincial Assemblies and other minority notables;

(d) District Minority Committees

These Committees have been set up in all the districts of the country. Their purpose is to look into the day-to-day problems of the minorities and to resolve them at their doorstep. The Committees are headed by the Deputy Commissioners/Additional Deputy Commissioners and are composed of members of minority communities residing in the District.

85. There are various bodies in Peru responsible for dealing with complaints concerning human rights violations, including complaints relating to violations of the rights of persons belonging to minorities, and for guaranteeing the right of everyone to fair and adequate compensation for any damage he or she might suffer as a result of any threat to their fundamental rights. Accordingly, the institution of Defensor del Pueblo (Ombudsman) is enshrined in the Constitution; it is the Ombudsman's responsibility to safeguard the constitutional and fundamental rights of individuals and of the community and to ensure that the State administration fulfils its obligations and provides public services to citizens.

86. The Government of Yugoslavia stated that the institutional mechanism for the protection of the rights of national minorities was strengthened after the adoption of the Constitution of Yugoslavia by the establishment of the Federal Ministry of Human and Minority Rights in July 1992. Montenegro has its own Republican Council for the Protection of Members of National and Ethnic Groups,

while Serbia has the Commission of the National Assembly for Inter-Ethnic Relations and the Government Commission on Human Rights.

87. Some States undertake territorial subdivision to make it possible for compactly settled minorities to have greater influence over political, social and economic decisions affecting their members. Given the scale and extent of the minority ethnic clusters in China and all the political, economic, cultural and other factors involved, the country applies regional autonomy in areas where ethnic minorities are concentrated. There are now 159 such national autonomous regions, including 5 administratively independent autonomous regions of provincial rank, 30 autonomous prefectures and 124 autonomous counties, together accounting for 64 per cent of the total area of the country. Under the Constitution and the Law on Regional National Autonomy, the organs of self-government of national autonomous areas are local administrative organs of the State. Besides having the powers of other local organs of State, they are autonomous in matters relating to politics, economics, culture and education, etc. In the view of the Government, the system of national regional autonomy has brought important benefits as regards guarantees of all democratic rights for China's minorities and the promotion of development in the minority national regions and unity among the various ethnic groups.

88. The Government of Yugoslavia pointed out that municipalities as territorial units were in charge of local government. In view of the fact that, by and large, ethnic minorities live as compact entities in individual municipalities, they form local governments at municipal levels in proportion to their number. Thus, for example, the Democratic Union of Vojvodina Hungarians has formed a local government in six municipalities in Vojvodina: Subotica, Kanjiža, Senta, Ada, Bačka Topola and Mali Idjoš, and has five deputies in the Republican Assembly.

K. Commitments under international treaties and agreements

89. With respect to commitments under international treaties and agreements, States usually give the list of international conventions in the field of human rights to which they are parties. The Government of Turkey mentioned the Treaty of Lausanne of 1923, 1/ by which Turkey agreed to the identification of a number of population groups as "minorities".

90. The Declaration on the Rights of Persons Belonging to National and Ethnic, Religious or Linguistic Minorities is considered to be a very important instrument aimed at promoting and protecting the whole cluster of rights of persons belonging to minorities. In the view of the Government of China, in the current situation, the Declaration's emphasis on peaceful ways and means of protecting the rights of persons belonging to minorities is of important practical significance. Sharp conflicts persist between peoples and ethnic groups in several parts of the world; on occasion, ethnic antagonism and incessant armed clashes have led to instances of active xenophobia, disturbances and bloodshed, in which overall the human rights and fundamental freedoms of a billion people have been gravely violated. This cannot but induce the international community to pay close attention and to worry. The Government expressed its hope that the appropriate United Nations bodies will be able to

give this matter their full attention, urging the parties to the various issues to settle their differences by peaceful means, do away with hostility and bring about unity and concord between nations.

III. ACTIVITIES OF THE RELEVANT ORGANS AND BODIES OF THE UNITED NATIONS GIVING DUE REGARD TO THE DECLARATION WITHIN THEIR MANDATES

A. Commission on Human Rights

91. The General Assembly, in paragraph 3 of its resolution 48/138, called upon the Commission on Human Rights to examine ways and means to promote and protect effectively the rights of persons belonging to minorities, as set out in the Declaration.

92. The Commission on Human Rights, at its fiftieth session, in 1994, considered the report prepared by the Secretary-General on the subject (E/CN.4/1994/72 and Corr.1). This report contained the relevant replies from the Governments of Austria, Benin, Chad, China, Finland, Germany, Greece, Hungary, Jordan, Norway, Romania, Ukraine and Yugoslavia, as well as the reply submitted by a non-governmental organization, the International Federation for the Protection of the Rights of Ethnic, Religious, Linguistic and other Minorities.

93. The Commission also took note with appreciation of the final report of the Special Rapporteur of the Subcommission on Prevention of Discrimination and Protection of Minorities, Mr. Asbjørn Eide, on possible ways and means of facilitating the peaceful and constructive solution of problems involving minorities (E/CN.4/Sub.2/1993/34 and Add.1-4).

94. In its resolution 1994/22 of 1 March 1994, the Commission on Human Rights, taking note of General Assembly resolution 48/138, emphasized the need to promote and protect effectively the rights of persons belonging to minorities as set out in the Declaration.

95. The Commission urged States, in paragraph 2 of its resolution, to take, as appropriate, all the necessary constitutional, legislative, administrative and other measures to promote and give effect to the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities. In addition, in paragraph 12, the Commission requested the Secretary-General to seek views and information from Governments, the specialized agencies, relevant United Nations organs and bodies, regional intergovernmental organizations and bodies and non-governmental organizations and experts in all regions on issues relating to the promotion and implementation of the Declaration.

96. The Commission also urged the Subcommission on Prevention of Discrimination and Protection of Minorities to continue to give due regard, within its mandate, to the promotion and protection of the rights of persons belonging to national or ethnic, religious and linguistic minorities, and endorsed the decision to entrust Mr. Asbjørn Eide, without financial implications, with preparing a working paper containing suggestions on the feasibility and usefulness of the

preparation of a more comprehensive programme for the prevention of discrimination and protection of minorities.

97. It may be pointed out that the Commission, at its special session on Rwanda held in Geneva on 24 and 25 May 1994, analysed new phenomena which had the effect of killing members of the ethnic groups and was described as genocide. The deliberations of the special session also convincingly showed that all rights embodied in the Declaration had been violated (E/CN.4/S-3/4).

98. The Commission had before it both the report of the United Nations High Commissioner for Human Rights, Mr. José Ayala Lasso, on his visit to Rwanda (E/CN.4/S-3/3) and the section of the report of Mr. Bacré Ndiaye, the Commission's Special Rapporteur on extrajudicial, summary or arbitrary executions, on his April 1993 mission to Rwanda (E/CN.4/1994/7/Add.1). The High Commissioner's concluding recommendations, as contained in his report, laid the foundation for the Commission resolution.

99. In resolution S-3/1 of 25 May 1994 entitled "The situation of human rights in Rwanda", the Commission noted with deep concern that a situation of ethnic and political armed conflict, systematic slaughter and massacres continued to exist in Rwanda, resulting in grave violations and abuses of human rights, including massive loss of lives, which may exceed 500,000, and destruction of property. It also recalled that the killing of members of an ethnic group, with the intention of destroying such a group in whole or in part, constituted the crime of genocide.

100. The Commission expressed its alarm at all repressive policies and policies directed against members of particular ethnic groups, and also called upon all parties concerned to ensure the protection of the rights of all persons regardless of their national or ethnic, religious or linguistic background. In addition, it called upon the parties to the conflict to ensure safe passage for those fleeing from the conflict areas including, where necessary, to asylum countries and to ensure the right to return under safe conditions.

101. The key points of the resolution included the appointment of human rights field officers and the requirement that "a strong human rights component" be included in any United Nations conflict resolution/peace-building in Rwanda, the High Commissioner being responsible for ensuring this. The resolution also appointed a Special Rapporteur to visit Rwanda as soon as possible and report back within four weeks. Mr. René Degni-Ségui (Côte d'Ivoire) was appointed at the session. His mandate was to investigate the situation at first hand, to receive information, including on root causes and responsibilities for the recent atrocities, to compile information on possible violations of human rights, breaches of international humanitarian law, crimes against humanity and acts of genocide and to call on existing mechanisms for assistance. His reports are also to be submitted to the Security Council.

102. The Special Rapporteur on Rwanda submitted his report (E/CN.4/1995/7) on 28 June 1994. It documented the background to the conflict, pointing out that:

> "The reason for what is taking place in Rwanda is not ethnic as such, but rather political, the aim being ... the retention of power, by the

representatives of one ethnic group, ... who are using every means, principally the elimination of the opposing ethnic group, but also the elimination of political opponents within their own group."

The refusal to allow a democratic political opposition, together with the incitement to ethnic hatred and violence (principally through the government-controlled radio station, aggravated by the training and arming of the militias and the removal of moderates from positions of authority) and impunity are cited as the three main causes of the massacres.

103. Given these developments, the Commission requested the existing mechanisms of the Commission on Human Rights, including the Special Rapporteur on extrajudicial, summary or arbitrary executions, the Special Rapporteur on the question of torture, the Representative of the Secretary-General on internally displaced persons, the Working Group on Enforced or Involuntary Disappearances and the Working Group on Arbitrary Detention, as well as human rights treaty bodies, where appropriate, to give urgent attention to the situation in Rwanda and to provide, on a continuing basis, their full cooperation, assistance and findings to the Special Rapporteur and to accompany him on visits to Rwanda whenever necessary.

B. Subcommission on Prevention of Discrimination and Protection of Minorities

104. In its resolution 1993/43 of 26 August 1993, the Subcommission entrusted one of its members, Mr. Asbjørn Eide, with the task of preparing a working paper containing suggestions for a comprehensive programme for the prevention of discrimination and protection of minorities. As mentioned above, this decision had been endorsed by the Commission on Human Rights in its resolution 1994/22.

105. In compliance with those requests, Mr. Eide prepared a working paper (E/CN.4/Sub.2/1994/36), which had direct relevance for the implementation of the Declaration. This is especially true with respect to all of the recommendations contained in chapter V, entitled "Areas of action by the Sub-Commission". In particular, attention may be drawn to the following conclusions and recommendations:

"...

"33. It having been recognized that the Subcommission is the only expert body which brings together the dual mandate of prevention of discrimination and protection of minorities, the elements in the programme of work should be spelled out. The normative basis has gradually been constructed and exists now in its main outline, consisting in particular of the following elements: the Convention on the Elimination of All Forms of Racial Discrimination, the International Convention on the Protection of the Rights of Migrant Workers and Members of Their Families, the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities; the Declaration on the Elimination of All Forms of Intolerance based on Religion or Belief; and the forthcoming declaration on the rights of indigenous peoples. There are several other instruments,

including those adopted by other agencies, such as the UNESCO Convention against Discrimination in Education, and ILO Convention No. 169 Concerning Indigenous and Tribal Peoples in Independent Countries.

"34. Priority attention should be given to the implementation of this normative system in national law, both constitutional and statutory law. The proper combination of provisions concerning equality and non-discrimination and provisions allowing for conditions to maintain group identity, should be encouraged.

"...

"40. Whichever monitoring system is developed regarding minorities, the important task for the Subcommission is to be able to deal with the totality of the questions concerned and to study the interrelationship between the different sets of issues - non-discrimination, racism, ethnic conflict, religious intolerance, xenophobia. On that basis the Subcommission may be able to give guidance to the many other bodies, rapporteurs and agencies which deal with separate aspects of the same totality.

"41. The Subcommission and the Committee on the Elimination of Racial Discrimination should encourage States to establish recourse procedures for those who are victims of racial or ethnic discrimination.

"...

"49. Once the Subcommission recognizes its unique position as the only body with the mandate to integrate the concern with discrimination and with minorities, it should elaborate a coherent programme on these issues, which are of burning actuality. It is hoped that the observations made in the present paper, together with the recommendations contained in the study on possible ways and means of facilitating the peaceful and constructive solution of problems involving minorities (E/CN.4/Sub.2/1993/34 and Add.1-4) may help the Subcommission in this endeavour."

106. The Subcommission, at its forty-sixth session, adopted resolution 1994/4 of 19 August 1994 entitled "Prevention of discrimination and protection of minorities", in which it took note of the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities, and expressed its conviction that its implementation, in conjunction with the International Convention on the Elimination of All Forms of Racial Discrimination 2/ and all other relevant international instruments, provided the best guidance for ensuring equality and non-discrimination between all groups in society and finding peaceful and constructive solutions to minority situations, in accordance with international law.

107. The Subcommission recommended that the Commission on Human Rights endorse the following recommendations:

"(a) That an inter-sessional working group of the Subcommission be established, consisting of five of its members, to examine, inter alia,

peaceful and constructive solutions to situations involving minorities, and in particular to:

(i) Review the practical application of the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities;

(ii) Provide recommendations to the Subcommission and other competent entities, including the High Commissioner for Human Rights, on further measures for the protection of minorities in cases where the working group finds a risk of the eruption or escalation of violence between different groups in society;

(iii) Promote dialogue between minority groups in society and between those groups and Governments;

"(b) To request the assistance of Mr. Asbjørn Eide to prepare an analytical report on minority issues, as envisaged in Commission resolution 1994/22 of 1 March 1994, to submit a preliminary report to the Commission at its fifty-second session and a final report at its fifty-third session, bearing in mind in particular the new developments affecting minorities;

"(c) That the Centre for Human Rights be strengthened to enable it to provide adequate services to the working group and for relevant studies, and for the purpose of undertaking relevant evaluation and action in this field;

"(d) That the study by Mr. Eide on possible ways and means of facilitating the peaceful and constructive solution of problems involving minorities (E/CN.4/Sub.2/1993/34 and Add.1-4) be published in all the official languages of the United Nations and given the widest possible circulation".

C. United Nations Centre for Human Rights

108. The Centre for Human Rights has been continuing to assist the General Assembly, the Economic and Social Council, the Commission and the Sub-Commission, as well as the relevant treaty bodies, in the implementation of the Declaration.

109. The Centre also carries out research and studies in this field, assists in the preparation of reports by special rapporteurs and administers the programme of advisory services and technical assistance relating to the implementation of the Declaration and requested by the General Assembly in its resolution 48/138.

110. In particular, a national seminar on human rights was held in Vilnius, Lithuania from 12 to 14 April 1994. The seminar was organized by the Centre for Human Rights as part of its programme of advisory services and technical assistance in cooperation with the Lithuanian Parliament (The Seimas) and the United Nations Development Programme (UNDP) Office in Vilnius. The specific objective of the seminar was to facilitate the exchange of information on

national problems and actions being taken specifically in respect of minorities and, in so doing, to identify obstacles and possible solutions to the problems in the application of relevant international human rights standards.

111. The seminar brought together parliamentarians, government officials, judges and representatives of non-governmental organizations active in the field of human rights at the national level. An average of 20 participants, including women, constantly attended the seminar. Participants included those belonging to ethnic Russian and Polish communities. The remarkable achievement of the seminar was that the United Nations delegation had a special meeting with members of Parliament to consolidate ideas on the follow-up assistance needed in this country and informed participants of all aspects of the programme of Advisory Services and Technical Assistance. Consequently, the Centre positively considered a request for such assistance in order to maintain a momentum for the promotion of human rights generated by this seminar.

112. In July and August 1994, the Centre for Human Rights conducted human rights needs assessment missions in both Armenia and Azerbaijan, designed to form the basis of country programmes of technical assistance in each of those countries. During those missions, the representatives of the Centre held consultations with representatives of all national minority groups, in order that their views and concerns might be effectively responded to in the Centre's programme development activities for the Caucasus. In addition, the Mission held discussions on minority issues with relevant Government offices, including with presidential advisers on minority issues in both countries. As a result of these missions, the Centre will produce comprehensive needs assessment reports for both Armenia and Azerbaijan, each of which will include particular attention to proposals for training and institutional strengthening aimed at ensuring the effective protection and promotion of the rights of national, ethnic, religious, and linguistic minorities, consistent with international human rights standards, in particular with those embodied in the Declaration.

113. A seminar on the promotion and protection of the rights of minorities in Romania is scheduled to take place in Bucharest from 17 to 21 October 1994. It will be organized in cooperation with the Romanian Government and participants will be invited from among the national minorities in the country, national non-governmental organizations and governmental institutions. Issues to be discussed will include ethnic and linguistic rights, as well as religious and cultural rights of minorities.

IV. SPECIALIZED AGENCIES

United Nations Educational, Scientific and Cultural Organization

114. A comprehensive document on the protection and promotion of the cultural rights of persons belonging to minorities, within UNESCO fields of competence, has been prepared and submitted to the Executive Board at its one hundred and forty-fourth session at its one hundred and forty-fourth session (144 EX/15 of 5 April 1994). By its decision 4.4.1, the Executive Board took note of the document and invited the Director-General to continue to implement the activities in this field scheduled for 1994-1995.

115. As pointed out in document 144 EX/15, UNESCO activities for minorities were centred on the following: (a) the struggle against discrimination; (b) the gathering, exchange and circulation of information; (c) raising public awareness; (d) education for human rights and for intercultural understanding; and (e) strengthening endogenous capacities.

116. So far, five consultations on the implementation of the Convention and Recommendation against Discrimination in Education have been organized. Of the 172 States consulted by questionnaire, 71, or 42 per cent, replied (including 46 States parties to the Convention and 25 States reporting on their implementation of the Recommendation). With regard to legislation, the general picture that emerges is that there are appropriate provisions at present in the 71 States to prevent discrimination in education, including discrimination against persons belonging to minorities, the Convention and Recommendation having played a decisive role in this regard.

117. In 1994-1995, the sixth consultation on the implementation of the Convention and Recommendation against Discrimination in Education will, in conformity with 27 C/Resolution 1.9, focus on four population groups: (a) women and girls; (b) persons belonging to minorities; (c) refugees; and (d) indigenous people. It is essential that a maximum number of Member States should answer the consultation so that the Secretariat can benefit from a vast array of information that will allow it in the near future to identify new needs and forms of action in this field.

118. In the context of action taken by UNESCO to develop and promote cultural rights, various studies have been carried out to improve knowledge of the situation of minorities in different regions of the world. Three studies have thus been carried out on ethnic group relations in Africa, Latin America and in Asia and Oceania, as well as a special study on the cultural evolution of countries with diverse ethnical and national groups. In 1992, three supplementary studies were carried out on the legal protection of the cultural rights and identities of minorities in Asia, Africa and Europe. These activities will be continued in 1994-1995 with a series of studies on the content of cultural rights, with emphasis on the protection and promotion of cultural identities and linguistic rights. The compilation of measures taken in different countries and regions concerning cultural rights of persons belonging to minorities, which was started in 1993, will be continued with a view to their publication.

119. Various activities (studies, research, publications, meetings) have been undertaken in the last few years to identify more successfully the educational needs of certain minorities and the specific measures that would enable each group concerned to overcome the obstacles hindering its inclusion in socio-cultural and economic life. Studies done by several countries (China, Philippines and Malaysia) in cooperation with the Principal Regional Office for Asia and the Pacific of UNESCO are an example of this.

120. Under the communication programme, UNESCO has also supported a number of radio and audio-visual productions made by and for cultural minorities and marginalized groups in close cooperation with non-governmental and professional organizations. These include the Institute for Latin America (IPAL), the VIDEORED group in Lima, Peru, the World Association of Community Radio Broadcasters (ARMARC) and Mahaweli Community Radio in Sri Lanka. Under the culture programme, in addition to emergency action taken to safeguard the endangered heritage of minorities, mention should be made of action to revive the oral and written traditions of minority peoples or nomads and action to strengthen pluralism by encouraging the cultural expression of minorities and intercultural dialogue.

121. In 1994-1995, two target groups have been singled out for a series of pilot projects: the gypsies in Europe and the minorities of Viet Nam. The Government of Viet Nam has decided to establish a global policy for the 53 minorities of the country, with particular emphasis on the safeguarding of their intangible cultural heritage. An international meeting of experts was held in Hanoi from 15 to 18 March 1994 to draw up a national plan for the safeguarding and promotion of this heritage. The projects scheduled, to be funded from extrabudgetary sources, include: the establishment of a training centre on the collection of the intangible heritage; the establishment, in different provinces, of five cultural centres for minorities; the establishment of an institute for the study of minorities and an inventory of the crafts of minority groups. The main potential sources of funds are Japan and France. Experience gained in drawing up the national plan for the safeguarding and promotion of the intangible heritage of minorities in Viet Nam will be of great value in responding to similar needs in neighbouring countries.

122. UNESCO, in cooperation with the Marangopoulos Foundation for Human Rights, organized an international workshop on new forms of discrimination: migrants, refugees, minorities in Olympia, Greece, from 13 to 14 May 1994. This workshop was attended by experts from 12 countries, representatives of leading intergovernmental organizations active in prevention of discrimination, including those of the United Nations Centre for Human Rights, the Office of the United Nations High Commissioner for Refugees, the Council of Europe, as well as representatives of NGOs.

123. The meeting paid particular attention to the problems of prevention of discrimination against minorities and protection of their rights in a comprehensive manner. It was stressed, inter alia, that implementation of the rights of minorities is closely linked to the questions of stability and security and that particular efforts are needed to further consolidate international standards concerning the rights of persons belonging to minorities. The document of the meeting, including all the reports presented by

the participants, is to be published in 1995 with the financial contribution of UNESCO.

V. TREATY BODIES

A. Human Rights Committee

124. The General Comment N23(50) adopted by the Committee at its 1314th meeting (fiftieth session) on 6 April 1994, on article 27 of the International Covenant on Civil and Political Rights 3/ may contribute to the interpretation of the provisions of the Declaration. In particular, it helps to clarify several issues relating to pluralism and participation of different groups, the sovereignty and territorial integrity of a State party, and ensuring a number of civil and political rights to persons belonging to minorities.

125. The General Comment states as follows:

> "1. Article 27 of the Covenant provides that, in those States in which ethnic, religious or linguistic minorities exist, persons belonging to these minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practice their own religion, or to use their own language. The Committee observes that this article establishes and recognizes a right which is conferred on individuals belonging to minority groups and which is distinct from, and additional to, all the other rights which, as individuals in common with everyone else, they are already entitled to enjoy under the Covenant.
>
> "...
>
> "3.2 The enjoyment of the rights to which article 27 relates does not prejudice the sovereignty and territorial integrity of a State party. At the same time, one or other aspect of the rights of individuals protected under that article - for example, to enjoy a particular culture - may consist in a way of life which is closely associated with territory and use of its resources. This may particularly be true of members of indigenous communities constituting a minority.
>
> "...
>
> "5.1. The terms used in article 27 indicate that the persons designed to be protected are those who belong to a group and who share in common a culture, a religion and/or a language. Those terms also indicate that the individuals designed to be protected need not be citizens of the State party. In this regard, the obligations deriving from article 2 (1) are also relevant, since a State party is required under that article to ensure that the rights protected under the Covenant are available to all individuals within its territory and subject to its jurisdiction, except rights which are expressly made to apply to citizens, for example, political rights under article 25. A State party may not, therefore, restrict the rights under article 27 to its citizens alone.

"5.2 Article 27 confers rights on persons belonging to minorities which 'exist' in a State party. Given the nature and scope of the rights envisaged under that article, it is not relevant to determine the degree of permanence that the term 'exist' connotes. Those rights simply are that individuals belonging to those minorities should not be denied the right, in community with members of their group, to enjoy their own culture, to practice their religion and speak their language. Just as they need not be nationals or citizens, they need not be permanent residents. Thus, migrant workers or even visitors in a State party constituting such minorities are entitled not to be denied the exercise of those rights. As any other individual in the territory of the State party, they would, also for this purpose, have the general rights, for example, to freedom of association, of assembly, and of expression. The existence of an ethnic, religious or linguistic minority in a given State party does not depend upon a decision by that State party but requires to be established by objective criteria.

"5.3. The right of individuals belonging to a linguistic minority to use their language among themselves, in private or in public, is distinct from other langauge rights protected under the Covenant. In particular, it should be distinguished from the general right to freedom of expression protected under article 19. The latter right is available to all persons, irrespective of whether they belong to minorities or not. Further, the right protected under article 27 should be distinguished from the particular right which article 14 (3) (f) of the Covenant confers on accused persons to interpretation where they cannot understand or speak the language of their choice in courts. Article 14 (3) (f) does not, in any other circumstances, confer on accused persons the right to use or speak the language of their choice in court proceedings.

"6.1. Although article 27 is expressed in negative terms, that article, nevertheless, does recognize the existence of a right and requires that it shall not be denied. Consequently, a State party is under an obligation to ensure that the existence and the exercise of this right are protected against their denial or violation. Positive measures of protection are, therefore, required not only against the acts of the State party itself, whether through its legislative, judicial or administrative authorities, but also against the acts of other persons within the State party.

"6.2. Although the rights protected under article 27 are individual rights, they depend in turn on the ability of the minority group to maintain its culture, language or religion. Accordingly, positive measures by States may also be necessary to protect the identity of a minority and the rights of its members to enjoy and develop their culture and language and to practice their religion, in community with the other members of the group. In this connection, it has to be observed that such positive measures must respect the provisions of articles 2 (1) and 26 of the Covenant both as regards the treatment between different minorities and the treatment between the persons belonging to them and the remaining part of the population. However, as long as those measures are aimed at correcting conditions which prevent or impair the enjoyment of the rights guaranteed under article 27 they may constitute a legitimate differentiation under the

Covenant, provided that they are based on reasonable and objective criteria.

"...

"8. The Committee observes that none of the rights protected under article 27 of the Covenant may be legitimately exercised in a manner or to an extent inconsistent with the other provisions of the Covenant.

"9. The Committee concludes that article 27 relates to rights whose protection imposes specific obligations on States parties. The protection of these rights is directed to ensure the survival and continued development of the cultural, religious and social identity of the minorities concerned, thus enriching the fabric of society as a whole. Accordingly, the Committee observes that these rights must be protected as such and should not be confused with other personal rights conferred on one and all under the Covenant. States parties, therefore, have an obligation to ensure that the exercise of these rights is fully protected and they should indicate in their reports the measures they have adopted to this end."

B. Committee on the Elimination of Racial Discrimination

126. In his working paper mentioned above, Mr. Asbjørn Eide pointed out the following:

> "Prevention of conflicts arising from discrimination or from tensions between different ethnic or religious groups requires a continuous dialogue with States on the implementation of the principles contained in the relevant international instruments. This dialogue is facilitated by the monitoring functions carried out by the treaty bodies. Of particular importance here are the activities of the Committee on the Elimination of Racial Discrimination (CERD). In monitoring the implementation of the International Convention on the Elimination of All Forms of Racial Discrimination, the Committee may be able to detect, at an early stage, dangerous developments which require attention."

127. CERD is going to consider, at its forty-sixth session, in March 1995, a proposal to amend document CERD/C/70/Rev.3 (Guidelines for the preparation of reports by States parties) by adding three new paragraphs, one of which will read as follows:

> "States parties are requested to note that the Committee on the Elimination of Racial Discrimination, like other human rights treaty bodies, has been invited by the General Assembly (resolution 47/135, operative paragraph 4) to give due regard, within its mandate, to the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities."

VI. SPECIAL RAPPORTEURS

128. As mentioned above, there have been cases in which special rapporteurs, appointed by United Nations human rights organs to investigate human rights situations in specific regions and countries, have found themselves face to face with violations of the rights of persons belonging to minorities. In particular, the reports of the Special Rapporteur on Rwanda, Mr. Degni-Ségui, and the Commission's Special Rapporteur on extrajudicial, summary or arbitrary executions, Mr. Bacré Ndiaye, were mentioned.

129. The Special Rapporteur on human rights in the territory of the former Yugoslavia, Mr. Tadeusz Mazowiecki, in his eighth periodic report (E/CN.4/1995/10), described situations in which a few members of one group were attempting to survive whilst living in localities where they are numerically far inferior to members of another religious or ethnic group.

130. He also wrote that:

> "The problem of tiny and surrounded enclaves is well illustrated by the situations of Rotilj and Stari Vitez. Rotilj is a small village near Kiseljak, primarily inhabited by Muslims but in an area with a largely Bosnian Croat population. Stari Vitez, within the town of Vitez, is in a similar situation, though much more badly war-damaged. Residents of both enclaves spoke to the Special Rapporteur of their continued fear and sense of insecurity. It is clear that they remain subject to discrimination and unequal treatment. Either because of fear (Rotilj) or regulation (Stari Vitez), they are not yet free to move outside their enclaves. In both cases there is a lack of willingness on the part of leaders of the majority population to make real progress in creating a climate of trust and reconciliation." (para. 6).

VII. INTERGOVERNMENTAL ORGANIZATIONS

A. Council of Europe

131. The Council of Europe is in the process of developing instruments and policies regarding minority issues. In particular, the heads of State and Government of "the 32" requested the Committee of Ministers to elaborate the following instruments: (a) a draft convention on the protection of national minorities; (b) a draft optional protocol to the European Convention for the Protection of Human Rights and Fundamental Freedoms relating to rights of persons in the field of culture; and (c) measures of confidence aimed at enhancing tolerance and understanding among peoples.

132. Should the Council of Europe complete its elaboration of those instruments and, eventually, adopt them, its role in promotion and protection of the rights of members of minorities would be significantly strengthened. These instruments will be a valuable contribution to the European Convention on human rights and the European Charter for regional or Minorities' Languages. The latter was opened for signature on 2 October 1992. Only one State (Norway) has not so far ratified it.

B. European Commission on Human Rights

133. It was pointed out that the European Convention did not lay down any specific minority rights. Its text refers to "national minorities" only in article 14, the provision on non-discrimination. Association with a national minority is one of several grounds on which discrimination is prohibited, and therefore the case-law on article 14 concerning other grounds of discrimination may also be relevant, at least as regards the general principles. It should be also recalled that article 14 has no independent existence of its own, i.e. it does not lay down the non-discrimination principle in absolute terms, but only in so far as the enjoyment of the rights and freedoms enshrined in the Convention is concerned. Accordingly this provision can only be applied in conjunction with other Convention articles as if it formed an integral part of these articles (cf. Belgian Linguistic judgement of 27 June 1968, Series A, no. 6).

134. The scope of applicability of article 14 is therefore determined by the scope of the other Convention articles. It should be noted that many matters which might be of particular importance for national minorities have been found to be outside the ambit of the Convention. They include, inter alia, the right to nationality, the right to personal documents, the right of access to the public service, the right to work, freedom of profession and establishment and the right to (non-contributory) social benefits. Accordingly, discrimination with regard to these matters cannot be made a subject of complaint to the Convention organs (cf. Digest of Strasbourg case law, vol. 4, p. 47 ff. for a list of cases).

135. It should further be noted that in the case of States which have not ratified the Protocols to the Convention, discrimination cannot be alleged concerning the rights enshrined in these Protocols. This might affect such important rights as: the right to freedom of movement (Protocol 4, art. 2); the prohibition of the expulsion of nationals (Protocol 4, art. 3); the prohibition of the collective expulsion of aliens (Protocol 4, art. 4).

136. Special considerations apply to the use of languages. A right to the use of a particular language in contacts with the authorities is not generally guaranteed, but "language" is also one of the grounds on which discrimination is prohibited under article 14. This may be of importance in particular where the exercise of procedural rights recognized by the Convention is concerned, i.e. in the areas of articles 5, 6 and 13. However, it appears that here article 14 cannot be given full effect since articles 5 and 6 contain special provisions on the use of language.

137. A further important consideration for effective exercise of minority rights arises in the area of procedure. Article 25 recognizes the right of petition of "persons", "non-governmental organization" and "groups of individuals". Individual persons belonging to a national minority can of course complain that they are being discriminated against on the ground of their belonging to this minority. The right of petition in such a case may also be exercised collectively by a "group of individuals". However, in the case-law of the Commission "groups of individuals" are treated as an aggregate of individuals and required to fulfil the same procedural conditions as individual applicants.

138. A possibility to complain of the treatment of a minority as such is however provided in the context of an inter-State application under article 24 of the Convention. Unlike individuals, States may complain of legislation and administrative practices in another State as such (cf. Ireland v. U.K. judgement of 18 January 1978, Series A, no. 25).

139. Case-law dealing specifically with the special situation of minority members is relatively sparse. The following cases may be mentioned:

(a) In at least two cases, the Commission stated that the right to self-determination (of national minorities) is not guaranteed by the Convention (cf. No. 6742/74, D.R. 3, p. 98 concerning Germans formerly living in Czechoslovakia, and No. 7230/75, D.R. 7, p. 109 concerning the autochtonous population in Suriname);

(b) Discrimination of a national minority with respect to several Convention rights was also established in the inter-State case of Cyprus v. Turkey (Commission Report 10.7.76, para. 503). The relevant criterion here was that the measures concerned were specifically directed against the Greek Cypriot population in the North of Cyprus;

(c) In the case of the Kalderas gypsies (D.R. 11, p. 221) the Commission considered that a refusal to deliver identification papers to members of a nomadic group may raise issues under articles 3 and 14 of the Convention and, concerning birth certificates, also article 8 of the Convention. The case was however rejected for non-exhaustion of domestic remedies. The situation of nomads was also considered in application No. 13572/88 (Östergren and others v. Sweden, Dec. 1.3.91). However, the Commission held that there was no interference with specific Convention rights of the Sami people concerned. In this context the Commission stated, inter alia, that the Sami community was not an association within the meaning of article 11 of the Convention;

(d) Finally, reference should be made to the treatment of minorities in third States not parties to the Convention. In its case-law concerning the examination of expulsions under article 3 of the Convention the Commission has repeatedly dealt with cases in which inhuman treatment of the persons concerned was to be feared because of their belonging to particular minority groups (cf. in particular cases on the expulsion of Tamils to Sri Lanka, 13163-65/87, Vilverajah and others v. U.K., and 17550/90, 17825/91, V and P v. France, both pending before the Court; cf. also several cases concerning the expulsion of Kurds to Turkey and of Croats to Yugoslavia, i.e. No. 10032/82, Dec. 5.10.83).

VIII. NON-GOVERNMENTAL ORGANIZATIONS

140. The International Federation of Human Rights (IFHR) sent its report N187, dated April 1994, on the situation of human rights in Mauritania. It stated that the rights of Negro-African minorities were violated and expressed its concern about the massive displacement of persons belonging to those minorities to other parts of the State or even their expulsion to Senegal and Mali. IFHR stated that the Arabo-Berbères (Maures) had destroyed some villages of Negro-Africans and confiscated their property. This, in the opinion of IFHR,

constitutes acts of discrimination and violation of the rights embodied in article 2 of the Declaration. In addition, the organization pointed out that the rights of Negro-Africans to use their language and to develop their culture were not recognized; this also constituted a violation of article 4 of the Declaration.

141. Human Rights Watch/Africa expressed its concern about the continuing attacks on the Ogoni ethnic group by the Nigerian authorities. It stated that over 1,000 persons were believed to have been killed by government forces since last year. A new assault on the area began on 3 April 1994 while many Ogonis were celebrating Easter. Seven Ogoni villages were destroyed by Nigerian troops and about 20 Ogonis were killed after a minor dispute with a neighbouring community led to the intervention of the Nigerian military. Thousands were rendered homeless.

IX. CONCLUSIONS AND RECOMMENDATIONS

142. Effective promotion of the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities, in conjunction with the implementation of the International Convention on the Elimination of All Forms of Racial Discrimination and all other relevant international instruments, would provide the best ways and means of ensuring the right of persons belonging to minorities.

143. The replies from States showed that non-discrimination and special measures leading to the equal enjoyment of all human rights remained the basis of the protection of rights of persons belonging to minorities. States are also convinced of the need to ensure equality and non-discrimination between all groups in society and to find peaceful and constructive solutions to minority situations in accordance with international law.

144. States pointed out that all groups residing on their territories should cooperate peacefully in the search for constructive accommodation of their respective concerns within the general framework of international human rights law and should abstain from any use of violence.

145. It is essential to emphasize that many problems and even severe conflicts like those in Rwanda arose from the Government and other elements of society: sections of the security and armed forces and the mass media. Sometimes these conflicts originate in ethnic groups themselves, as demonstrated by Serbs in Bosnia and Herzegovina.

146. Under aggravated circumstances, as in Rwanda and the former Yugoslavia, the use of thematic and country rapporteurs is increasingly being resorted to. It is for the General Assembly and the Commission on Human Rights to appoint such rapporteurs, to give close attention to their reports in so far as questions within their mandates are concerned and to provide them with suggestions on how they can best address those aspects of their particular mandate.

147. States particularly noted relevant international norms and standards embodied in the Declaration. Priority attention should be given to the

implementation of this normative system in national law, both constitutional and statutory. The proper combination of provisions concerning equality and non-discrimination, and provisions allowing for conditions to maintain group identity, should be encouraged.

148. Issues concerning persons belonging to minorities, as well as compliance with international obligations and commitments concerning the rights of such persons, are matters of legitimate international concern and consequently do not constitute an exclusively internal affair of the particular State.

149. Special efforts must be made to resolve specific problems in a constructive manner and through dialogue by means of negotiations and consultations with a view to improving the situation of persons belonging to minorities. The promotion of dialogue between States, and between States and persons belonging to minorities with a view to the implementation of the Declaration, should be encouraged. Unilateral, bilateral and multilateral efforts by Governments to explore avenues for enhancing the effectiveness of the implementation of the Declaration should also be encouraged.

150. The significant contributions which have been made by the relevant treaty monitoring bodies, in particular the Committee on the Elimination of Racial Discrimination and the Human Rights Committee, should be emphasized. In particular, the General Comment adopted by the Human Rights Committee regarding article 27 of the International Covenant on Civil and Political Rights helps to clarify many issues relating to rights of persons belonging to minorities and thus contributes to the interpretation and the promotion of standards contained in the Declaration.

151. Evidence that minority rights in general and their implementation in particular are a vital issue is manifest in the consideration of those issues and related proposals by the Commission on Human Rights, the Subcommission and on Prevention of Discrimination and Protection of Minorities and the Special Rapporteurs. Those proposals, in particular made by the Subcommission in its resolution 1994/4, may be considered as a basis for further concrete measures to be taken by the relevant United Nations organizations, organs and bodies aimed at the promotion of the Declaration.

152. The United Nations human rights organs and UNESCO stressed the importance of the provisions of the Declaration for the United Nations and its specialized agencies in the realization of minority rights. These organizations, as well as regional institutions such as the Conference on Security and Cooperation in Europe and the Council of Europe, should do more to implement the Declaration, as well as minority rights provisions in other existing human rights instruments.

153. Issues relating to intolerance and xenophobia directed against ethnic minorities were matters of concern to Mr. José Ayala Lasso, the United Nations High Commissioner for Human Rights. These were clearly expressed by him in his address to the Commission on Human Rights at its fiftieth session. He stated "I shall do everything possible to heighten awareness of the need to combat these trends and practices which are causing suffering at the present time and will

poison the future with hatred and desire for revenge". The High Commissioner can undoubtedly play a major role in solving those problems.

154. One of the principal requirements for effective protection of the rights of persons belonging to minorities is the existence of adequate national law and institutions. Therefore, common efforts should continue to be undertaken so that the United Nations programme of advisory services and technical assistance in this area would provide the services of experts, inter alia, to assist in developing legislation that is in compliance with relevant recognized international instruments. Similar efforts should continue to encourage the establishment of national institutions and mechanisms and to strengthen existing ones.

155. Coordination of such activities should be further encouraged and properly financed, as recommended to the Secretary-General by the World Conference on Human Rights. It had also recommended that high-level officials of relevant United Nations bodies and specialized agencies, besides coordinating their activities at their annual meetings, also assess the impact of their strategies and policies on the enjoyment of all human rights.

156. Given the recommendation of the World Conference, it would seem desirable and appropriate to include in the agenda of the annual meetings of relevant United Nations bodies and specialized agencies an item concerning coordination between their programmes aimed at promotion and protection of the right of persons belonging to minorities.

157. It should be reiterated that questions relating to minorities can be satisfactorily resolved only in a democratic political framework based on the rule of law, with a functioning independent judiciary. This framework guarantees full respect for human rights and fundamental freedoms; equal rights and status for all citizens, including persons belonging to minorities; the free expression of all their legitimate interests and aspirations; political pluralism; social tolerance; and the implementation of legal rules that place effective restraints on the abuse of governmental power.

Notes

1/ Leagues of Nations, Treaty Series, vol. XXVIII, p. 12.

2/ Resolution 2106 A (XX), annex.

3/ Resolution 2200 A (XXI), annex.

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HUMAN RIGHTS QUESTIONS: HUMAN RIGHTS QUESTIONS, INCLUDING ALTERNATIVE APPROACHES FOR IMPROVING THE EFFECTIVE ENJOYMENT OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS

Effective promotion of the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities

Report of the Secretary-General

Addendum

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I. INTRODUCTION

1. The present report contains additional information received from Governments and non-governmental organizations after the publication of the report of the Secretary-General on the subject (A/49/415).

2. As at 25 October 1994, replies had been received from the Governments of Angola, Belarus, Colombia, Poland, Sweden and Ukraine. The Governments of Denmark and Germany sent a joint report on the situation of national minorities in the border regions of both States. The Government of Yugoslavia sent additional information on the status of the Bulgarian minority in that State.

3. The Minority Rights Group, a non-governmental organization in consultative status with the Economic and Social Council, sent a report entitled "Land Rights and Minorities" to the Secretariat (see chap. III below).

4. The present document contains the analysis of the additional replies submitted in accordance with General Assembly resolution 48/138 of 20 December 1993, entitled "Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities".

II. PROMOTION AND PROTECTION BY STATES OF THE RIGHTS OF PERSONS BELONGING TO NATIONAL OR ETHNIC, RELIGIOUS AND LINGUISTIC MINORITIES

A. The protection of the existence of persons belonging to minorities

5. Unfortunately, the war waged by the National Union for the Total Independence of Angola (UNITA) against the innocent population has created financial pressures and a demand for substantial human resources that the Government of Angola is hard pressed to meet. The defence of the civilian population, children, women and the elderly is a sacred obligation of the Government and is therefore of the utmost importance, and all resources are being devoted to the effort.

6. The Government of Angola attaches the utmost importance to human rights. The laws of Angola guarantee the protection of these rights at all levels, and the courts regularly monitor and reinforce them. There are no ethnic, religious or linguistic problems in Angola.

7. Article 18 of the Constitution is very clear:

> "All citizens are equal before the law and enjoy the same rights and are subject to the same obligations, without distinction as to colour, race, ethnic group, sex, place of birth, religion, ideology, level of education or economic or social status."

8. Unfortunately, in the provinces illegally occupied by UNITA, human rights are subjected to the most abhorrent atrocities and to continuing violations. Without protection, the civilian populations of the provinces illegally occupied by UNITA are subjected to all kinds of arbitrary treatment and to the most repugnant abuses.

9. Notwithstanding the difficulties and restrictions of all kinds which have resulted from a violent war that has brought destruction in all areas of the country's economic, social, administrative and cultural life, the commitment of the Angolan authorities to democracy is undeniable. The Government's respect for human rights is a reality that can be observed daily. The Angolan Government will continue its policy of promoting and protecting human rights and respect for international instruments on human rights and humanitarian law.

10. The Government of Belarus pointed out that the Supreme Soviet in November 1992 adopted the Law on National Minorities, which was based on the provisions concerning national minorities laid down in the report of the Conference on the Human Dimension of the Conference on Security and Cooperation in Europe (CSCE), held at Copenhagen in June 1990. In particular, according to article 5 of the Law, members of national minorities in Belarus enjoyed the same rights as all other citizens of the Republic.

11. The Governments of Denmark and Germany stated that the German minority population in the south of the Kingdom of Denmark was estimated at roughly 20,000, living mostly in the border region in the south and in the east of the Sonderjylland/North Schleswig Authority. In the larger communities in its settlement area the minority account for between 5 and 20 per cent of the population. Other members of the German minority live scattered throughout other parts of the region.

12. The Danish minority in the Land of Schleswig-Holstein in the far north of Germany is estimated at approximately 50,000, most of whom lived in Flensburg, Schleswig and Husum in Schleswig/Sydsleswig and in several other communities south of the German-Danish border and in the south-western part of the region. The figures for the Danish minority as a percentage of the population of individual communities varied widely and ranged from communities where there range from only a few minority families to about 20 per cent in Flensburg and some smaller places

13. The two Governments further pointed out that the protection of the fundamental rights and the identity of the members of the German minority guaranteed by the Constitution of the Kingdom of Denmark, which, while containing no special provisions on the protection of minorities, is generally liberal and kind to minorities. The further foundation for minority rights was provided by the Copenhagen Declaration of 29 March 1955, which followed the declaration of the Government of Denmark of 27 October 1949 (Copenhagen Statement). As regards general legislation, the Private Schools Act, the Libraries Act and the Social Affairs Act (for kindergartens), in particular, furnish the legal basis for the promotion of minority establishments.

14. The basic rights of the members of the Danish minority are, like those other German nationals, enshrined in the Basic Law of the Federal Republic of Germany. The legal basis for the status of the Danish minority was the Constitution of the Land of Schleswig-Holstein of 13 December 1949 in the form of the Act of 13 June 1990 Amending the Constitution of Schleswig-Holstein. Article 5 of the Constitution provides, inter alia, that profession of adherence to a national minority is open to all; it does not release individuals from generally applicable civic duties.

15. The process of systematic transformation initiated in Poland in 1989 has a significant impact on the situation of national minorities. Poland strives to adjust its laws towards the standards of international law. New legal regulations were made to address national minorities, usually in the form of provisions, in particular laws and lower normative acts. Many legal solutions, compatible with international standards, had been introduced prior to the adoption of General Assembly resolution 48/138 and Commission on Human Rights resolution 1944/22.

16. National minorities in Poland may freely associate. The law of 7 April 1989 on associations is based on the principle of freedom of association. Since its entry into force, 120 national associations have been registered (under communism, only seven such associations could operate).

17. New legal solutions were introduced into the Polish educational system in the field of teaching national minorities their mother tongue and having lessons in their mother tongue. The legal basis in that respect is the Law on the Educational System of 1991 and the Ordinance by the Minister of National Education on Organizing Education to Sustain the National, Ethnic and Linguistic Identity of the Student Members of a National Minority of 24 March 1992. This enables even a small group of students (from three to seven depending on the school profile) to have a class formed with teaching in the mother tongue or a curriculum in that language.

18. Other facilities are safeguarded for minorities under the Election Law to the Sejm (Diet) of the Republic of Poland of 28 May 1993. Election caucuses of registered organizations of national minorities are not subject to percentage thresholds in the number of votes gathered nationwide.

19. The law of 8 March 1990 on territorial self-government enables national minorities to participate in the local society. In communes where the non-Polish population prevails, they can determine their own destiny to the degree permitted by the scope of communal competence (the Law of 17 May 1990 on the Division of Responsibilities and Competence between Communal Units and State Administration Bodies).

20. An important element of State policy is increased access by minorities to public radio and television. This was safeguarded in the law of 29 December 1992 on radio and television broadcasting. Several regional radio stations air programmes in the languages of national minorities.

21. Another crucial element of protection of the rights of national minorities is the Law on the Relation of the Polish State towards the Polish Autocephalous Orthodox Church of 1991. Prior to that, the Law on the Relation of the Polish State towards the Catholic Church was passed in 1989, and determined the legal status of the Byzantine-Ukrainian domination in Poland. The above laws are of importance to the national minorities, which also belong to religious minorities. In addition, such persons are covered by the Ordinance by the Ministers of Labour and Social Policy, and of National Education of 12 November 1990 pertaining to leave from work or school for persons belonging to churches and other religious institutions on days that are not official holidays in Poland. This ordinance enables the Belarusians (Orthodox), Ukrainians (Greek Catholics) and Jews to observe their traditions and customs. Similar laws are drafted in the Sejm for the Evangelical Lutheran Church and Evangelical Reformed Church, and also for minor confessions.

22. Efforts to improve the legal position in Poland continue and, after 1993, drafts for new legal regulations were prepared.

23. The parliamentary Committee for National Minorities included in its draft of a new constitution an article pertaining to the rights of national minorities. The Constitution of the Republic of Poland provides for equal civil rights irrespective of the nationality of a citizen (art. 67, para. 2 and art. 81, para. 1), and imposes a penalty for any indirect or direct infringement of those rights. The dissemination of hatred or contempt, instigation of discord or humiliation of a person on the grounds of nationality are forbidden by law (art. 81, para. 2). However, no formula for protecting national identity among minorities has been developed in the form stipulated in the new draft.

24. Furthermore, work has commenced on the drafted law on the protection of rights held by members of national minorities. The White Paper drafted in cooperation with representatives of national minorities is regarded as a foundation for work by the Parliamentary Committee.

25. The fundamental changes in the legal system introduced in recent years are of major significance to national minorities. Departure from the totalitarian system and efforts to accept international standards have become prominent in Polish legislation. The overall process, however, including the case of national minorities, has not yet been completed.

26. In Sweden, according to Swedish constitutional law, no regulation can impose upon any citizen that he or she be discriminated against because of race, skin colour, ethnic origin, or the fact that he/she belongs to a minority.

27. The Government of Ukraine stated that Ukraine was a multi-ethnic State. In a total population of 52 million, the share of Ukrainians is 37.4 million or 72.7 per cent, while Russians, who represent 22 per cent, form the largest national minority, followed by 0.9 per cent of Jews, 0.9 per cent of Belarusians, 0.6 per cent of Moldavians, 0.4 per cent of Poles and Bulgarians, and 2.8 per cent of representatives of other nationalities. Representatives of ethnic minorities number 14 million, or 27.3 per cent.

28. An extensive political and legal basis in the field of inter-ethnic relations has been laid down in Ukraine. Among major legislative acts on this issue, the Law of Ukraine on National Minorities, the Law on Refugees and the Law on Migration should be mentioned.

29. A major problem for Ukraine is the issue of the return and rehabilitation of minorities deported during the Soviet period, which included Crimean Tatars, Germans, Poles, Bulgarians, Greeks and Armenians. The State is taking measures aimed at their legal, political, social and cultural rehabilitation.

30. The Government of Yugoslavia pointed out that, during the census in 1991, 26,922 inhabitants of Yugoslavia, that is, 0.2 per cent of the total population, declared themselves Bulgarians. In terms of their number they constituted the tenth minority group in the State. Persons belonging to the Bulgarian minority lived in central Serbia, and were most numerous in the communes of Bosilegrad (72.9 per cent of the inhabitants), Dimitrovgrad (52.5 per cent) and Surdulica (6.2 per cent). Persons belonging to national minorities in the Federal Republic of Yugoslavia, including the Bulgarian minority, enjoyed on the basis of equality with other citizens all human rights guaranteed in international instruments on human rights, as well as additional minority rights; the latter, in the view of the Government, went beyond the provisions of the United Nations Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities (General Assembly resolution 47/135, annex).

31. The replies referred to above showed that non-discrimination and special measures leading to the equal enjoyment of all human rights remained the basis of the protection of the existence of persons belonging to minorities. In that respect the special measures being taken by the Government of Ukraine relating to the return of the deported Crimean nationals should be emphasized.

B. The right to enjoy their own culture

32. In accordance with the provisions of the Law on National Minorities of Belarus, members of national minorities are free to found cultural societies. In addition, they have the right to receive financial support from the State.

33. The Government of Colombia indicated that ethnic and cultural education in Colombian society is diverse and pluralistic; it focuses on the descendants of indigenous ethnic groups comprising the pre-Colombian cultures, the descendants of Africans brought as slaves during the colonial period and the descendants of ethnic Europeans who colonized the country, the majority of whom were Spanish.

34. The Political Constitution of Colombia, promulgated in 1991 by a democratically elected National Constituent Assembly, recognizes this fact and provides the country with the tools required to guarantee the protection of ethnic, cultural, religious and linguistic diversity.

35. Thus, this fundamental document states in articles 7 and 8 that the State recognizes and protects the ethnic and cultural diversity of the Colombian nation, and, that it is the obligation of the State and of individuals to protect the cultural and natural assets of the nation.

36. The protection of linguistic traditions is established in article 10, which states that the education provided in communities with their own linguistic traditions shall be bilingual.

37. Similarly, the Colombian Government protects religious freedom as follows:

"Article 19

"Freedom of religion is guaranteed. Every individual has the right freely to profess his religion and to disseminate it individually or collectively. All religious faiths and churches enjoy equal freedom before the law."

38. There are two large minority ethnic groups in Colombia: the indigenous population and the Black population.

The Afro-Colombian population

39. The Afro-Colombian population comprises approximately 6.5 million persons, including the ethnic group resulting from intermarriage between Whites and Blacks, usually referred to as mulattos.

40. The Afro-Colombian population may be found in the Pacific and Atlantic coastal regions, the mining areas of the Departments of Caldas, Antioquia and Santander, in the Cauca and Magdalena river valleys, in the agroindustrial belts and in the outskirts of the cities of Cali and Medellín.

41. Most of the Black communities of Colombia live along the Pacific coast and are grouped in 32 towns in the departments of Chocó, Valle del Cauca, Cauca and Nariño.

42. The major urban concentrations of Blacks may be found in Buenaventura, Quibdó, Tumaco, Guapi, Puerto Tejada, Santander de Quilichao, Puerto Berrío, Puerto Boyacá, Dorada, Turbo, Cartagena, Barranquilla, Santa Marta, Cali and Riohacha.

43. The Pacific and Atlantic coastal regions are home to 90 per cent of the Afro-Colombian population, who have chosen to live mainly along the coasts and rivers. Along the Pacific coast, the Black communities live among a population which includes 5 per cent indigenous inhabitants, living in the mountainous regions and along the rivers, and 5 per cent White inhabitants.

44. There are two kinds of economies along the Pacific coast: the formal economy, characterized by agriculture, industry, fishing and construction, and the traditional economy. The Black communities are the actors in the traditional, or subsistence, economy. Peasants in this region are farmers, fishermen, miners, craftsmen, woodcutters, oarsmen, sailors, hunters and day labourers. They work in one capacity or another, depending on their needs. Their basic skills enable them to move about within the various parts of the region, in rhythm with the planting and crop rotation seasons. Women are

involved in domestic activities and work with men in agriculture, mining, crafts, fishing and retail sales.

45. This is an economy that is close to nature, one in which the values of community life, respect for and harmony with nature and the concepts of collective and interpersonal solidarity prevail. Most of what is produced is used by the family, and only a small percentage goes to market. In rural areas, the communities own small parcels of land.

46. In implementation of provisional article 55 of the new national Constitution, which calls for the enactment of a law recognizing the collective ownership by Black communities of uncultivated lands in the territory which they occupy, the national Government reached an agreement through consultation and established a national commission and various regional advisory commissions which submitted to the Congress of the Republic what is now draft law 70 of 1993. The law contains an advanced framework for the establishment of standards to improve the objective circumstances of Black communities. Among the most significant aspects of the law, the following merit special mention:

(a) Political rights. With the creation of a special district, Black communities will have a minimum of two seats in the House of Representatives, guaranteeing them a permanent voice in the Congress of the Republic;

(b) Territorial rights. The draft law grants the right of collective ownership to the communities occupying uncultivated lands in rural areas adjoining the rivers of the Pacific basin which they work using traditional methods of production. In this way, moreover, the responsibility for protecting the environmental resources of the area has been entrusted to the communities living there, which entails a substantial commitment on their part to the sustainable management of the biological and geographical resources of the Chocó;

(c) Mining rights. The Black communities living in the Pacific region have priority rights with respect to mining operations there;

(d) Ethnic education. Draft law 70 of 1993 establishes various mechanisms guaranteeing the right to an education which reflects the population's needs and cultural aspirations;

(e) Economic progress and development. To achieve these goals, provision has been made for the participation of Black communities in key social policy-making bodies, including territorial planning councils and governing councils of the regional autonomous corporations. In addition, the Black communities concerned are required to be actively involved in the design and execution of technical cooperation projects.

47. The measures envisaged in draft law 70 of 1993 thus lend significant support to the effort to improve the circumstances of Colombia's Black communities.

Indigenous ethnic groups

48. At present, there are no fewer than 80 known ethnic groups in Colombia, and more than 1 million indigenous people live throughout the national territory. As a result of the 1991 Constitution and the far-reaching effort launched over 25 years ago to organize and mobilize indigenous peoples, indigenous communities today are very well represented in the political sphere and participate actively in public life.

49. The political Constitution of 1991 represented substantial progress in that it recognized that all cultures of the country deserved respect in the legal, social and political spheres. Articles 7, 8, 10 and 70 of this fundamental instrument provide the foundation for the recognition of indigenous communities and other ethnic groups. Article 70 states:

> "The State has the obligation to promote and foster access to the culture of all Colombians equally by means of ongoing education and scientific, technical, artistic and vocational instruction at all stages of the process of creating the national identity.
>
> "Culture in its diverse manifestations constitutes the basis of nationality. The State recognizes the equality and dignity of all who live together in the country. The State shall promote research on and the development, dissemination and knowledge of the cultural values of the nation."

50. The objective of this provision is not only to preserve the customs and traditions of ethnic groups (dances, songs, clothing, myths, legends), but also, to ensure their active integration into the cultural life of the country.

51. As a complement to the foregoing, article 10 of the Constitution both establishes Spanish as the official language of Colombia and states that the languages and dialects of ethnic groups are also official in their own territories. The education provided in communities with their own linguistic traditions shall be bilingual.

52. Article 330 of the Constitution establishes a broad administrative framework for indigenous communities:

> "In accordance with the Constitution and the laws, the indigenous territories shall be governed by councils, which shall be established and regulated in accordance with the practices and customs of their communities and shall exercise the following functions:
>
> "(1) Oversee the application of legal regulations governing the uses of the land and the settlement of their territories;
>
> "(2) Design economic and social development policies, plans and programmes within their territory, and in accordance with the National Development Plan;

"(3) Promote public investment in their territories and monitor their proper implementation;

"(4) Collect and distribute their funds;

"(5) Oversee the conservation of natural resources;

"(6) Coordinate the programmes and projects promoted by the various communities in their territory;

"(7) Collaborate in the maintenance of public order within their territory in accordance with the instructions and provisions of the national Government;

"(8) Represent the territories before the national Government and before other entities to which they belong; and

"(9) Other functions stipulated by the Constitution and the laws.

"The exploitation of the natural resources in the indigenous territories shall be carried out without endangering the cultural, social and economic integrity of the indigenous communities. The Government shall encourage the participation of representatives of the respective communities in decisions adopted with regard to such exploitation".

53. Article 246 of the National Constitution grants indigenous peoples jurisdictional functions, which must be exercised in accordance with their practices and customs, provided that they are not contrary to the Constitution and the law:

"The authorities of the indigenous peoples may exercise their jurisdictional functions within their own territory in accordance with their own rules and procedures, provided that they are not contrary to the Constitution and the laws of the Republic. The forms of coordination between this special jurisdiction and the national judicial system shall be established by law."

54. In the opinion of the Constitutional Court:

"The situation of the members of indigenous communities differs from that of other territorial entities in that the former enjoy autonomy within their territories not only with respect to administrative, budgetary and financial matters, as may be the case in the departments, districts and towns, but also in the political and legal spheres, to the extent allowed by law; this means that they are able to elect their own authorities, which exercise jurisdictional functions within their territory. This is nothing less than the recognition and partial fulfilment of the principle of participatory and pluralistic democracy and respect for the ethnic and cultural diversity of the Colombian nation."

55. Similarly, article 171 of the National Constitution establishes a special district with two senators elected by indigenous communities, and such senators must have held a position of traditional authority in their respective communities.

56. The Bonn/Copenhagen Declarations of 1955 contain, among others, provisions relating to ensuring rights of pertinent minorities to culture. In particular, it states that the cultivation of Danish or German customs and culture is open to anyone and may not be contested or verified ex officio.

57. It was pointed out that the significant contribution to the German minority's cultural activities was the establishment of the library system. It ran the Deutsche Zentralbücherei (Central German Library), three mobile libraries, which visited villages and farms, and a total of 23 other village and school libraries - which were all linked in the Verband deutscher Büchereien (German Libraries Association). Members of the minority, as well as other Danish citizens, thus had access to a broad spectrum of German literature (about 190,000 volumes) and a wide range of tapes and cassettes. Apart from a legally established special grant from the Government of Denmark to the German minority's libraries - Denmark otherwise paid no grants to private libraries - funds were also received from Sonderjylland district and various municipalities.

58. In addition to a broad German cultural programme, including events and theatre trips to Germany, many associations that aimed at keeping up German traditions were available to the German minority in Denmark. The minority had set up several "German houses", which were financially self-supporting, to function as social and gastronomic centres.

59. The Danish minority's principal cultural and ethnic organization was the Sydslesvigsk Forening (SSF, South Schleswig Association), with the Dansk Generalsekretariat (Danish Secretariat-General) in Flensburg. A further 26 associations, which fulfil widely differing functions, are attached to the SSF. There were also a number of independent organizations. All worked together in an advisory committee known as Det sydslesvigske Samrad (The South Schleswig Advisory Group), which coordinated Danish activities.

60. The Danish minority has its own central library, the Dansk Centralbibliotek for Sydslesvig (Central Danish Library for South Schleswig), which is the main local library for adults and children and includes two mobile libraries, a bibliography section and a range of audiovisual material. It has two main branches and 110 small branches in schools and kindergartens. It also maintains a research department and an archive.

61. Among the most important principles of the national policy of Ukraine was the realization of cultural autonomy. There were about 237 national-cultural societies in the Republic, which published 48 newspapers. For example, 10 newspapers were published in Hebrew, four in the Crimean Tatar, three in Polish, seven in Romanian and Moldavian, and one in the Bulgarian language. There are 30 Russian theatres, as well as 36 Ukrainian-Russian, one Crimean Tatar, one Hungarian, one Jewish and one Romanian theatre.

62. The Government of Yugoslavia pointed out that the cultural activities of the members of the Bulgarian national minority were of a long-standing tradition and played a special role in the preservation and fostering of national identity. Cultural and artistic work unfolded through the cultural centres in Dimitrovgrad and Bosilegrad. There were two cultural and art societies of the Bulgarian national minority, as well as the "Hristo Botev" amateur theatre, which offered plays in Bulgarian. The municipal library of Dimitrovgrad has a stock of about 30,000 titles in Bulgarian, while the municipal library in Bosilegrad has about 14,000 titles. International cooperation was traditionally the interchange of cultural programmes and guest performances with cultural institutions in Bulgaria.

63. Bearing in mind what has been said above, it may be stated that the aforesaid States took measures to guarantee the right of persons belonging to minorities to equal participation in cultural activities. It is difficult to form an accurate estimate of guarantees of this right by those States because some of them (Denmark and Germany) described in detail the measures aimed at the promotion of this right, one State (Belarus) pointed out only some of those measures, while another State (Sweden) did not mention them at all. It may be stated, however, that the States guarantee equality of cultures and provide access to the culture of both the majority population and ethnic groups.

C. The right to profess and practise their own religion

64. The Governments of Denmark and Germany pointed out that the members of the German minority in the rural communities belonged to the Evangelical-Lutheran Nordschleswigsche Kirche (North Schleswig Church), an evangelical free church under Danish law, which is financed by its own income and by funds from the Nordelbische Kirche (Protestant Church) in Germany. In the four towns in the area inhabited by the minority, the Government of Denmark met on a legal basis the personnel and material costs for four German parishes within the scope of the Danish national church.

65. Church activities of the Danish minority are organized by the Dansk Kirke in Sydslesvig (Evangelical-Lutheran Danish Church in South Schleswig). As a registered association under Germany law it is a free church, with 44 parishes and 24 pastors. It is independent of the North Elbe Evangelical-Lutheran Church in Germany and of the Folkekirke (national church) in Denmark, but cooperates closely with the Dansk Kirke i Udlandet (Danish Church Abroad), a private organization in Odense, Denmark.

D. The right to use their own language

66. The Bonn/Copenhagen Declarations of 1955 contained provisions concerning the right of pertinent minorities to use their own languages. The relevant paragraphs of the Declarations read as follows:

> "Members of the two national minorities and their organizations may not be impeded in the spoken or written use of their chosen language.

"The minorities are entitled, in accordance with applicable laws, to establish general and adult education (including vocational) schools and kindergartens."

67. It was pointed out that the members of the German minority were fluent in German and also spoke Danish. The local school and kindergarten associations in the Deutscher Schul- und Sprachverein (German Schools and Language Association) maintained 18 private schools of various types, as well as 25 kindergartens for the German minority. The teaching language in the schools was German, but a wide-ranging education in Danish language and literature was obligatory and, along with German, a compulsory examination subject. The curricula must guarantee the same standard of education as we provided in Danish state schools.

68. The Deutsches Gymnasium (German upper secondary school), in keeping with the Danish education system, caters for classes 10 to 12 (with subject-based teaching). The teaching language is German and there are compulsory classes in Danish language and literature: technical Danish vocabulary is also taught, particularly in the sciences. Gymnasium studies lead to the Danish "student exam", which, by ordinance of the Ministry of Culture of the Land of Schleswig-Holstein, is recognized throughout Germany as a school-leaving and university entrance qualification (providing an appropriate range of subjects has been covered). The Gymnasium has a section for boarders and is under the supervision of the Danish Ministry of Education, which gives the private German schools - and all other private schools in the country - a government grant for each pupil amounting in 1993 to 73 per cent (by 1995 75 per cent) of the cost of keeping one pupil at a state school in 1991. Thanks to a special government grant for German-minority schools to go towards meeting the cost of native-speaker-standard bilingual instruction, the total government grant increased in 1993 to about 84 per cent of the cost incurred by one pupil at a state school in 1991. In addition, the Government of Denmark gives grants that go towards the cost of school transportation.

69. As far as the Danish minority in Germany is concerned, it was stated that all its members understood Danish and most of them spoke it as well, while they were also all fluent in German. In rural areas sections of the Danish minority spoke "plattdeutsch", a Low German regional dialect; in areas right on the border, some also addressed their German neighbours in Sonderjysk, a Danish regional dialect. The Danish minority also published a Danish-language daily newspaper, entitled Flensborg Avis, which contains a German section. In addition, Flensborg Avis held shares in Radio Schleswig-Holstein, a private radio station; the editors put together a daily news programme in Danish, which was broadcast on Radio Schleswig-Holstein. The minority saw no need to have other media as several Danish television and radio channels could be received in the settlement area and subscriptions were readily available to Danish newspapers and periodicals.

70. The sponsor of school and kindergarten activities is the Dansk Skoleforening for Sydlesvig (Danish Schools Association in South Schleswig), which currently runs 53 schools of different types and 63 kindergartens. The schools include primary and junior secondary schools, four secondary-modern schools and a grammar school as well as a boarding school and a residential adult education college. The language of instruction is Danish, except in the

main compulsory subject, German. In the final classes and courses, however, it is ensured that technical terms are also given in German, especially in maths, science and economics, so that the pupils can be adequately prepared for their training in German-speaking companies and universities. The school-leaving qualifications are recognized in both Germany and Denmark.

71. Under Schleswig-Holstein's Schools Act, Danish minority schools must be approved and given financial support if requested by the Danish Schools Association. The aims and establishments, as well as the qualifications of the teaching staff at private Danish schools, however, must correspond to those in state schools. They are supervised by the Ministry of Culture of the Land of Schleswig-Holstein. The Land makes a contribution for each pupil to help meet personnel and material costs; this amounts to 100 per cent of the costs incurred in keeping one pupil at a comparable state school in the previous year. Grants to cover school transport are made by the Land, districts and some of the municipalities. The Danish minority's kindergartens also use Danish. Many municipalities provide grants for their upkeep. Parents have to make the usual contributions.

72. The Government of Ukraine stated that the State provided exceptionally favourable conditions for the preservation and free development of languages of national minorities. In the regions with a large proportion of national minorities, their languages were used together with the State Ukrainian language. There were schools where instruction was in Russian (2,937 schools, Hungarian (61), Moldavian (12), Romanian (95), Crimean-Tatar (2) and other languages (8 schools).

73. In Ukraine, newspapers and magazines are published in the languages of the minority ethnic groups. For instance, five newspapers and two magazines are published in the Crimean Tatar language, and the all-Ukrainian newspaper Roden krai is published in Bulgarian. In accordance with a decree of the Council of Ministers, six state publishing houses established editorial boards for publishing literature in national minority languages. Training University has opened a Jewish department and the Kiev Theatre Art Institute is training personnel for the Hungarian drama theatre. New educational establishments for national minorities were created, one of which was the International Solomon University.

74. It is stipulated under the Constitution of Yugoslavia that, in areas where national minorities live, their languages and scripts shall be in official use. In Bosilegrad and Dimitrovgrad, communes with a majority Bulgarian population, the highest legal acts of the communes, their statutes, stipulate that, in addition to the Serbian language and the Cyrillic script, the Bulgarian language and script are simultaneously in official use. All the communal bodies and other organizations exercising public authority use of the Bulgarian language on an equal footing with the Serbian language. Geographical names, the names of streets, enterprises and other public signs are written in both languages. The Bulgarian language is used in both written and oral interchange between organs and organizations, as well as with parties, that it, citizens, in proceedings conducted to give effect to and protect the rights, duties and responsibilities of citizens, in the maintenance of records, the issuance of public documents and

so on. In the Dimitrovgrad elementary school and high school, all instruction is given in the pupils' mother tongue.

75. The replies referred to above showed that those States pursued the policy of teaching minority languages as well as majority ones. Teaching minority languages prevented language loss and also prevented the linguistic and cultural assimilation of relevant ethnic and national minorities. Moreover, the minority language transmitting the cultural values and traditions of the groups significantly contributed to the groups' identity. This right is closely interrelated with the right to education, which has been ensured in the aforesaid states. However, Denmark and Germany were the only States that specified that minority groups took part in running their educational systems.

E. The right to participate effectively in cultural, religious, social, economic and public life

F. The right to participate effectively in decisions on the national level

76. The Governments pointed out in a general way that every citizen of their States, irrespective of his or her membership in a majority or minority group, had the right to participate effectively in cultural, religious, social, economic and public life and in decisions at the national level. In addition, it was stated that, in Germany, national minority parties were exempt from the 5 per cent clause, under which political parties were required to gain at least 5 per cent of the valid votes cast to be represented in the Bundestag. A similar provision was made in the Electoral Act for the regional parliament of the Land of Schleswig-Holstein. Within the scope of proportional representation, however, a Danish minority party must obtain a number of votes corresponding to the number of votes required for the last seat to be won in the parliament of Schleswig-Holstein according to the procedure.

77. The political organization of the Danish minority (and the ethnic Frisians) is the Sydslesvigs Vaelgerforening (SSV, South Schleswig Voters' Association), which is based in Flensburg. This party has one member of parliament (who has parliamentary group status) in Schleswig-Holstein's parliament, as well as over 100 representatives in district, municipal and local administrations throughout the region. The SSV no longer puts up candidates for election to the Bundestag as it sees no chance of obtaining the necessary votes to win a seat. There is, however, a consultative committee on matters concerning the Danish minority at the Federal Ministry of the Interior. The committee is chaired by the Federal Minister of the Interior and includes members of the parliamentary groups in the Bundestag, a representative of the Government of Schleswig-Holstein and representatives of the Danish minority. It meets once a year and deals, in particular, with domestic affairs concerning the Danish minority and with the development of the minority's rights. The Minister-President of the Land of Schleswig-Holstein has appointed a commissioner for the border region to tackle issues relating to the minority.

G. The right to establish and maintain their own associations

78. In Denmark, the main organization of the German minority is the Bund deutscher Nordschleswiger (BdN, Federation of German North-Schleswigers), based in Åbenrå, and there are numerous other associations with specific functions. The central administrative agency is the Deutsches Generalsekretariat (German General Secretariat). The aim and purpose of the BdN is to look after the interests of the German minority in Denmark and to help ensure the harmonious development of the German-Danish border area. The BdN voices the concerns of the German minority in the two countries' parliaments, Governments and authorities and in public and maintains close contact with associations and cultural institutions in Germany. The BdN is also the organizational backbone of the Schleswigsche Partei (SP, Schleswig Party), which is particularly active in representing the minority in local politics. It sends one member to the Council of Sonderjylland and is represented on several local councils. The members of the Danish minority have formed many clubs and associations, ranging from the farming association to housewives' associations to citizens' groups, which help to hold the minority together and also run restaurants and so on.

79. The Deutscher Jugendverband für Nordschleswig (German Youth Association for North Schleswig) and the Nordschleswigschier Ruderverband (North Schleswig Rowing Club) comprise over 30 German youth groups, sports clubs and rowing clubs, which, with support from the municipalities, offer a wide range of leisure activities for young people and sports-minded adults, organize central sports competitions and contribute towards youth exchanges. The Jugendverband is linked with the youth organizations of other national minorities in the institution Jugend Europäischer Volksgruppen (JEV, Youth of European Ethnic Groups). The central instructional centre for the Jugendverband is Jugendhof Knivsberg.

80. The Sydslesvigs Danske Ungdomsforeninger (SDU, South Schleswig Danish Youth Associations) is the umbrella organization for the broad-ranging youth work of 77 youth associations. It sponsors recreational centres and sports facilities, as well as the Danish-speaking amateur theatre "Det lille Teater" in Flensburg. The SDU cooperates with the youth organizations of other national minorities in Jugend Europäischer Volksgruppen (Youth of European Ethnic Groups).

81. In Belarus, there are eight associations of national minorities. They are the association of Ukrainians of Belarus, "Vatra", the social-cultural association "Polissye", the Foundation for the Preservation of the Jewish Historical and Cultural Heritage in Belarus, the Union of Poles in Belarus, the Belarus-Azerbaijan society "Gobustan", the Byelorussian centre for German culture "Vozrodzenye", the "Moldova" society and the Byelorussian association of Muslim Tatars "Al-Kitab". In Ukraine, there are 237 national-cultural societies.

82. In Sweden, according to constitutional law, everybody living in Sweden has the right to be organized politically and culturally.

83. The Government of Yugoslavia stated that the declining economic power in the country, to which the United Nations Security Council sanctions have contributed, has detracted from the basic conditions for the exercise of human rights, as well as from the State's capacity to assist minority institutions and organizations. The Democratic Association of Bulgarians is a registered political organization, but one with a small number of members and little political influence. In the view of the Government, it takes advantage of this situation seeking to have it seen as a deliberate neglect of minority rights on the part of the State (for example, the situation regarding the financing of minority papers, which are confronted with a crisis, as are all other papers, and, in fact, the State is making efforts and managing to maintain them under these conditions).

H. The right to establish and maintain free and peaceful contacts with other members of their group, as well as contacts across frontiers

84. It was pointed out that, in accordance with the Bonn/Copenhagen Declarations of 1955, the special interest of the Danish and German minorities in cultivating their religious, cultural and technical ties with Denmark and Germany, respectively, was recognized. There was relevant activity in this field. For example, an association called the Sydslesvigsk Forening devotes itself to promoting Danish work in South Schleswig, the Danish language, as well as Danish traditions and customs. It also maintained active contact with Denmark and the other Nordic countries.

I. Equality before the law

85. In addition to the joint Danish-German report, the Government of Denmark sent a list of measures concerning the integration of ethnic minorities and the prevention of racism and intolerance in Denmark, prepared by the Danish Ministry of the Interior. Stating that the total number of foreign citizens was about 189,000 or 3.6 per cent as of January 1994, the Ministry pointed to legal measures aimed at ensuring the nationality groups (mainly Turks, Iranians and Sri Lankans) the status of non-discrimination and equality before the law.

86. Paragraph 266 (b) of the Danish Penal Code states that:

> "Any person who, publicly or with the intention of wider dissemination, makes a statement or other communication by which a group of people are threatened, insulted or degraded on account of their race, colour, national or ethnic origin, religion or sexual orientation, shall be liable to a fine, simple detention or imprisonment for any term not exceeding two years."

87. Promulgation Order No. 626 of 29 September 1987 makes discrimination in establishments and at arrangements open to the public a punishable offence. Act No. 466 of 30 June 1993 on the Racial Equality Board established a mechanism to combat unequal treatment in all its aspects and to support the view that all ethnic groups in society are given equal opportunities. The Board may not deal

with individual complaints, but studies trends and general problems of inequality, on the basis of which it provides advice to the proper authorities. The Board also plays an awareness-creating role, for example, by organizing meetings and conferences. The Board is currently working in four main areas to promote tolerance and ethnic equality: the media, the labour market, the police and judiciary, and the welfare and health sectors.

88. The Government of Sweden stated that the 1994 Act to Counteract Ethnic Discrimination contains two prohibitions of improper treatment on ethnic grounds: because of race, skin colour, national or ethnic origin or religious creed. One prohibition covers the treatment of job applicants and the other the treatment of employees. The chief sanction against violations of the discrimination prohibition was compensation. In the Local Government Act, there are provisions intended to guarantee that all inhabitants in a municipality are treated equally and that matters are dealt with in a democratic manner. The principle of equality of treatment is fundamental and an appeal may be lodged against any municipal decision that rests on an inequitable foundation.

89. The Penal Code contains several different provisions on unlawful discrimination against a person on the grounds of his or her race, skin colour, national or ethnic origin or religious creed. Furthermore, as a result of a recent change in the Penal Code, a new provision has been added, according to which an aggravating circumstance was added for the increase in the severity of the punishment if a crime were committed from the motive to offend a person or a group because of race, skin colour, national or ethnic origin, religious creed or any similar circumstance.

90. In accordance with the relevant legislation, citizens of Ukraine who are members of national minorities have the right to be elected or appointed, as the case may be, on an equal footing to any position in the organs of legislative, executive or judicial power, local or regional government, in the army, in enterprises and in institutions or organizations. The Ukrainian State takes responsibility to ensure conditions for equal development of national minorities in ethnic, cultural, language, religious and other fields.

91. The Government of Yugoslavia stated that every citizen of Yugoslavia, whether a member of a minority or majority group, was equally entitled to share in the distribution of power at all levels under equal conditions.

J. Mechanism, procedure and other measures to promote and protect the rights of persons belonging to minorities

92. The Governments of Denmark and Germany stated that, since the number of votes cast for the Schleswigsche Partei was no longer sufficient to give the minority a mandate in the Danish national parliament, the Folketing, the Government of Denmark in 1983 set up a secretariat for the minority in the parliament and Government in Copenhagen. The head of the secretariat is elected by the minority. There is also a contact committee comprising representatives of the Folketing, the Government of Denmark and the German minority and chaired by the Danish Interior Minister. The committee usually meets once a year to discuss any problems that might arise, as well as the general situation of the

minority. With regard to contacts with Germany, and particularly with the Land of Schleswig-Holstein (which lies directly below the border), the Council for Matters Relating to the German Minority In North Schleswig of the Schleswig-Holstein Landtag (regional parliament) is of special significance. That body generally meets twice a year under the chairmanship of the President of the Landtag. It consists of members of the Landtag, members of the Bundestag from Schleswig-Holstein, representatives of the Government of the Land and representatives of the German minority in Denmark.

93. The Bund deutscher Nordschleswiger has links throughout Europe with other national minorities and ethnic groups within the framework of the Föderalistische Union Europäischer Volksgruppen (FUEV, Federalist Union of European Ethnic Groups) and cooperates with other German minorities in a working group. The activities of the BdN and the other German associations are financed through their own efforts, as well as through donations from private individuals, associations and foundations and, substantially, through grants from the Danish national budget and the budget of Danish municipalities. Considerable sums are also provided by the Federal Republic of Germany and the Land of Schleswig-Holstein.

94. The social welfare of the German families is the responsibility of the Sozialdienist Nordschleswig (North Schleswig Social Services). The work of the minority farmers is supported by the Landwirtschaftlicher Hauptverein für Nordschleswig (Main Agricultural Association for North Schleswig), which receives grants from the Government of Denmark for its advisory services. A group called Collegium 1961 looks after students from the German minority at Danish universities and colleges and, in that connection, runs two small student halls. The German minority sees shortfalls in public funding, particularly in the lack of grants for kindergartens in some communities and in the financing of cultural activities.

95. The Land of Schleswig-Holstein supports through grants not only the school system, but also cultural and youth work, adult education, the health service, the Federation of Agricultural Associations and the political work of the SSV group in the regional parliament. Grants for the Danish minority's cultural activities are given at the local level as well. The minority sees a problem, in particular, in what it regards as insufficient financial support for Danish culture and for kindergartens from some of the municipalities.

96. The two Governments also pointed out that, in the case of grants and other benefits from public funds decided upon a discretionary basis, that treatment of members of the two minorities must not differ from that of other citizens.

97. In addition, according to information provided by the Danish Ministry of the Interior, the Government of Denmark facilitates the setting up of, and provides economic support for, various associations and councils for immigrants and refugees, allowing them an effective means of voicing their concerns and wishes in relation to their situation in Danish society. Among the most important examples are two non-governmental organizations: the Federation of Ethnic Minorities in Denmark and the Immigrants Council in Denmark. Furthermore, the Council of Immigrants, which is a forum for all immigrant

organizations, provides advice to the Minister of the Interior on all matters related to immigration and integration.

98. The Ministry further pointed out that the Council of Europe met at Vienna on 8 and 9 October 1993 and adopted a plan of action for combating racism, xenophobia, anti-Semitism and intolerance. Part of the plan of action is a campaign aimed particularly at the young, that will have a national and local dimension in Denmark. This will be carried out by the Danish Youth Council, the Ministry of the Interior and a wide range of other institutions and organizations that make up the membership of the National Committee set up under the campaign. The campaign will, in all likelihood, consist of measures for the creation of general awareness and information, as well as special measures to promote cultural meetings by activating and integrating young members of ethnic minorities in leisure activities, associations and clubs also frequented by Danes. Furthermore, the Nordic Council has resolved to implement a Nordic campaign against racism and xenophobia. This campaign will be closely linked to the Council of Europe Campaign and will be implemented in such a way that work of a repetitious or inexpedient nature will be avoided.

99. The Government of Sweden pointed out that the two principal agencies entrusted with the task of counteracting ethnic discrimination were the National Board of Immigration and the Ombudsman against Ethnic Discrimination. The National Board of Immigration focuses on studies and dissemination of information and is responsible for communicating its findings so as to forestall and prevent ethnic conflicts. The Ombudsman against Ethnic Discrimination is responsible for counteracting existing or suspected discrimination, mainly from a legal perspective. The Ombudsman must assist individuals who have experienced discrimination and protect their rights by providing expert advice and information, help form public opinion by participating in public debate and recommend legislation and other measures to combat ethnic discrimination. In some cases, when a crime against the Act to Counteract Ethnic Discrimination was suspected, the Ombudsman has also had a litigating role.

100. Measures concerning a national minority in Sweden, the indigenous Saami population, were described in the eleventh report of Sweden to the Committee on the Elimination of Racial Discrimination. 1/ On 26 August 1993, after the submission of that report, the governmental authority for Saami affairs was inaugurated. The governing body of that authority is an assembly, the Sameting, with 31 members, all elected every fourth year by the Saami population. The Sameting will, inter alia, decide on the distribution of funds allocated by the Government to promote Saami culture and to support Saami organizations.

101. The Government of Yugoslavia pointed out that funds were regularly earmarked from the budget of the Republic of Serbia for publishing expenses for the Bulgarian newspaper Bratstvo and for publishing houses. Within the framework of the last distribution of radio frequencies tender, the Government of the Republic of Serbia allocated a frequency to the assembly of the commune of Dimitrovgrad.

K. Commitments under international treaties and agreements

102. The Governments of Denmark and Germany pointed out the provisions of the Bonn/Copenhagen Declarations of 1955, which were analysed above. In the view of the Governments, German unification did not change the status in international law of the Bonn/Copenhagen Declarations. For its part, the Government of the Federal Republic of Germany has said that the Bonn Declaration constituted a binding international obligation, which has been approved by the German Bundestag and can be amended or terminated only with the agreement of the Government of Denmark. The Bonn/Copenhagen Declarations were, it stated, a unique example of a positive joint approach to tackling minority issues.

103. The Government of Ukraine considered that the realization of rights of persons belonging to minorities should correspond to international human rights standards embodied in the Charter of the United Nations and the Helsinki Final Act, including those relating to the territorial integrity of States. As a party to major United Nations conventions in the field of human rights, Ukraine undertook to be guided by the provisions of those instruments in its policy concerning the rights of persons belonging to minorities.

III. NON-GOVERNMENTAL ORGANIZATIONS

Minority Rights Group

104. The Minority Rights Group has recently published a report entitled "Land Rights and Minorities", written by Mr. Roger Plant with the support of the Group's office. The Minority Rights Group makes a descriptive survey of the problems of land rights, and traditional land-tenure systems faced by minority groups. It also assesses the legal and administrative measures adopted to deal with them. The large number of land and resource claims discussed in the report show that land and access to resources are a major source of conflict involving minorities, which the international community has been trying to resolve.

105. The parts of the report most relevant to the issue of the effective promotion of the Declaration are reproduced below:

> "There is no reference to land concerns in the 1992 United Nations Declaration on Minority Rights. There are general references to concerns of economic and social rights. Examples are the provision (Article 2.2) that minorities should have the right to participate in economic life, and the somewhat vague provision (Article 4.3) that 'States should consider appropriate measures so that persons belonging to minorities may participate fully in the economic progress and development in their country'. It has been argued that certain provisions of the Declaration can be construed as recognizing basic subsistence rights, in that depriving a group of the basic economic resources necessary to sustain its existence would violate the principles of the Declaration.
>
> "Many recent reports published by the Minority Rights Group itself indicate that land is among the foremost problem areas - if not the foremost problem area - now faced by minorities in different parts of the

world. This is equally true for the indigenous peoples of the Americas, the forest-dwelling peoples of the South and South-East Asia, African pastoralists, the 'northern minorities' of Russia and such groups as the Bedouin of the Negev in the Middle East ...

"Given the potential gravity of problems in some regions, it is surprising that the international community has been slow to grapple with the land rights dimensions of emerging conflicts. The absence of anything approaching a set of principles means that the international community has to adopt an ad hoc approach when tensions erupt into armed and ethnic conflict. At the time of writing Bosnia constitutes perhaps the most flagrant example, but there are many other similarly horrendous situations on the horizon. Notably in Africa, land has been a crucial factor behind ethnic tensions in such countries as Ghana, Burundi and Rwanda in the first months of 1994 alone.

"Discrimination in land access can be an important factor fuelling ethnic tensions. It happens when a country is subject to conquest by a dominant group which is determined to exercise control over the most fertile lands and likely to secure a labour supply from the weaker groups by depriving them of equal access to the land. The colonial experience in developing countries usually involved white European minorities establishing one legal framework for settler groups and another for indigenous peoples. There have been more recent post-colonial experiences where an economically and politically dominant group has engaged in a clear pattern of discrimination, in both law and practice, against other population groups. In other cases land law and policies have favoured a politically dominant 'indigenous elite' at the expense of other ethnic groups, which comprise a significant proportion of the national population. The weaker sectors may have no sense of a special relationship with the land, their major or even only demand being equality of rights with the dominant sector.

"The main issue is often one of equal access to the land, particularly in the developing countries, where a large proportion of the population depends on land access for subsistence and livelihood. Despite a professed commitment to land reform by Governments and international donor agencies, the impetus for redistributive land reforms has been all but lost over the past two decades. In Latin America and parts of Asia and the Middle East there has been a steady trend towards greater rural landlessness, and in many cases a renewed pattern of land concentration. Ethnic or religious minorities comprise a large proportion of the rural landless. Many of them now earn their livelihood as casual labourers or seasonal migrant workers in agriculture. Their main demand is likely to be for access to the land as tenants or small farmers, or at least as regular agricultural workers with a minimum degree of social protection. Such demands are likely to be for affirmative action programmes of land and tenancy reform, perhaps targeted on the particular needs of vulnerable minorities ...

"As the study has sought to demonstrate, land can be a key issue behind minority claims for protection in many parts of the world. In some cases there are long-standing grievances, with minorities claiming the

right to restitution of lands of which they were dispossessed several decades or even centuries ago. In other cases, demands may be for a special protected status that will avert further dispossession today. In yet other cases, where there is evidence of blatant discrimination in patterns of land access and use, demands may be rather for genuine equality of rights with dominant majorities ...

"An important issue is the relationship between the land rights of minorities and equality of rights, including equal rights to the land. In some cases - perhaps most notably in Latin America - formal equality of rights has generated flagrant de facto inequalities. In other cases - notably in southern Africa and the Israeli-occupied territories - inequality of land rights has generated equally flagrant de facto inequalities. These are cases of blatant discrimination, the legacy of which now has to be addressed through affirmative action policies and programmes. Burning questions are those of land restitution and the extent to which future Governments should recognize the claims of the present-day landowners and occupiers who have benefited from racial discrimination in the past. In Eastern Europe different issues are raised by restitution. Evolving laws and policies, based on the long-standing claims of private landowners before the collectivization era, threaten to prejudice the land security of disadvantaged ethnic minorities with no prior claims to the land.

"There can be no easy answer to these questions. In some cases, the most vulnerable minorities are in danger of extinction if their claims to special protection are not met. In others, stronger minorities are pursuing their land claims with increasing vigour, forcing the State to establish mechanisms to deal with them. The time has surely come to grapple with these issues more effectively at the international level, to assist in arbitration on a complex array of claims.

"In future standard-setting or advocacy work on minorities, the international community faces a dilemma. There is a growing body of protection for the land and related resource rights of indigenous and tribal peoples, but no reference to land concerns in international law relating to minorities. Overall, the rights of indigenous or tribal peoples and other minorities are treated separately in international law, even though the basic distinctions between these groups are sometimes questioned by international legal experts. If the concept of minorities is not actually defined in current international law, and 'self-identification' is to be an important criterion in determining which peoples are to be considered as 'indigenous' or 'tribal', then the implications are that minorities will increasingly seek to define themselves as indigenous or tribal whenever they have major grievances concerning land rights ...

"As the report has aimed to demonstrate, a large number of minorities throughout the world could claim the status of indigenous and tribal peoples, and could formulate their land claims accordingly. But other minorities are clearly not indigenous, for example the descendants of immigrant or indentured workers. Many of these have traditionally depended

on land access for their survival, and may find their land security threatened by current processes of economic and social reform, including land privatization. In such cases, procedures are needed to ensure that vulnerable minorities receive fair and equal treatment under land reform and privatization programmes."

IV. CONCLUSIONS

106. In addition to conclusions and recommendations contained in the report of the Secretary-General (A/49/415) and after some sections of chapter II of the present report, the following conclusions can be drawn on the basis of the replies that have been analysed.

107. It is difficult to form a full picture of guarantees of the rights embodied in the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities by the States whose replies have been considered above because some States (Denmark and Germany) described in detail relevant legislation, policy and measures to that effect, while one State (Belarus) only pointed out some of them. All replies, however, showed again that non-discrimination and special measures leading to the equal enjoyment of all human rights remained the basis for the protection of rights of persons belong to minorities.

108. It should be pointed out that the States that sent replies, as parties to the major United Nations conventions in the field of human rights, undertook to be legally bound by the provisions of those treaties in their policies in this field. In particular, they expressly undertook obligations as States parties to respect and ensure the human rights embodied in those treaties as legal rules without discrimination or "without distinction of any kind".

109. The Declaration expresses minimum standards relevant to all national or ethnic, religious and linguistic minorities and applicable in all situations. The States noted pertinent standards embodied in that instrument and have been exploring ways and means of giving effective promotion to its provisions.

110. The replies were received mainly from European States, some of which, such as Denmark and Germany, demonstrated greater possibilities of inter-State cooperation through proximity. It would seem advisable that other States of the CSCE region should make full use of the mechanisms and procedures now in existence. States should also be advised to conclude bilateral treaties based on universal and regional instruments on equality, non-discrimination and the rights of persons belonging to minorities, including the Declaration of the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities.

Notes

1/ CERD/C/239/Add.1, art. 2.2.